

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper Jr., Circuit Court Judge
Case No. 2013-CP-40-7729
Appellate Case Tracking Number: 2017-002325

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SC Court of Appeals

The Gates at Williams-Brice Condominium
Association and Katharine Swinson,
individually, and on behalf of all others
similarly situated,

Appellants,

v.

Quality Built, LLC and Coast To Coast
Engineering Services, Inc. D/B/A Criterium
Engineers,

Respondents.

**RECORD ON APPEAL
VOLUME II**

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**RECORD ON APPEAL
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-7729

THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, individually, and on)
behalf of all others similarly situated,)

Plaintiffs,)

vs.)

QUALITY BUILT, LLC and COAST TO)
COAST ENGINEERING SERVICES, INC.)
d/b/a CRITERIUM ENGINEERS,)

Defendants.)

**Plaintiffs' Memorandum
In Opposition to
Defendant Quality Built, LLC's
Motion for Declaratory Relief,
Or In the Alternative,
Motion for Summary Judgment**

Plaintiffs submit this Memorandum in Opposition to Defendant Quality Built, LLC's Motion for Declaratory Relief, or in the alternative, Motion for Summary Judgment; and show the Court the following:

SUMMARY

Defendant Quality Built, LLC's Motion for Declaratory Relief and/or Motion for Summary Judgment should be denied for several reasons.¹ Quality Built's Motion for Declaratory Judgment is barred because there is no pending cause of action by either party for a declaratory judgment; therefore, any request for declaratory relief is improper. Even if the Court entertains Quality Built, LLC's Motion for Declaratory Relief, it should be denied because the Bankruptcy Sale Order does not exonerate Quality Built, LLC from liability in this case. If any declaratory relief is considered, the Court should declare that Quality Built, LLC is not shielded

¹ On March 3, 2017, Defendant Quality Built, LLC also initiated a Motion for Summary Judgment seeking dismissal of Plaintiffs' successor liability claim based on a statute of limitations defense. This untimely motion is briefed separately.

from liability to Plaintiffs by the Bankruptcy Sales Order/Purchase Contract. Additionally, genuine issues of material fact exist that make dismissal and summary judgment inappropriate.

PROCEDURAL HISTORY

In December 2013, this suit was filed as a putative class action on behalf of The Gates at Williams-Brice Condominium Association (“The Gates”) and its one hundred fifty-eight (158) condominium owners. The complaint alleged negligence/gross negligence and breach of warranty against Quality Built, LLC for damages caused by defective quality control during the construction of The Gates.

In January 2014, Plaintiffs served the complaint and discovery requests on Quality Built, LLC. Quality Built, LLC’s only response was correspondence that requested Plaintiffs’ voluntary dismissal of the claims against Quality Built, LLC (Austin Ltr., Exh. A).

In March 2014, contrary to Quality Built, LLC’s assertion in its Motions that Plaintiffs did not respond to the January 2014 request, Plaintiffs wrote to Quality Built, LLC to confirm that a review of QualityBuilt.com’s bankruptcy was being made. (March 2014 Drawdy Ltr., Exh. B). Plaintiffs then sought advice from bankruptcy counsel and contacted the QualityBuilt.com Bankruptcy Trustee (Drawdy Ltr. to QualityBuilt.com Bankruptcy Trustee, Exh. C).

In July 2014, Plaintiffs served a Notice of Deposition, *Duces Tecum*, in the underlying construction defect action² on Elizabeth Michaelis. Michaelis is President of Defendant Quality Built, LLC and Former President/Chief Financial Officer of Quality Built.com, the entity that was apparently hired to perform quality control services during The Gates’ construction.

² *The Gates at Williams-Brice Condominium Association, et al .v. DDC Construction, Inc., et al*, Case No. 2012-CP-40-8512 (the “Underlying Action”).

In August 2014, Michaelis appeared as a fact witness in the Underlying Action and testified regarding her involvement with Quality Built, LLC and its predecessor, QualityBuilt.com.

Throughout 2014 and 2015, Quality Built, LLC refused to answer Plaintiffs' complaint and discovery.

In October 2015, Plaintiffs wrote to Quality Built Counsel Austin, notifying Quality Built that Plaintiffs would file a Motion for Default Judgment if an answer to Plaintiffs' Complaint was not received by November 6, 2015. (October 2015 Drawdy Ltr., Exh. D).

In early November 2015, Plaintiffs filed a Motion to Amend the Complaint. The Amended Complaint clarified Quality Built, LLC is the successor to Qualitybuilt.com and added an express successor liability claim against Quality Built, LLC as a mere continuation of QualityBuilt.com. The Amended Complaint also added Defendant Criterium Engineers ("Criterium"), the entity that QualityBuilt.com hired to perform quality control services at The Gates. (Motion to Amend, Exh. E).

In May 2016, the Court issued an Order that allowed Plaintiffs to file their Amended Complaint.³ (Order, Exh. F).

In mid-2016, Defendant Criterium removed this case to the United States District Court. Defendant Quality Built, LLC joined and concurred in Criterium's removal. Plaintiffs opposed removal and prevailed on their Motion to Remand.

In February 2017, Defendant Quality Built, LLC filed this instant Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment.

³ This Court cannot determine the res judicata effect of its own order; it can only be determined by a second, subsequent court. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 805, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985) ("[I]t is true that a court adjudicating a dispute may not be able to predetermine the res judicata effect of its own judgment.").

CORPORATE HISTORY OF QUALITY BUILT, LLC

Circa 1994, Stan Luhr started the "Quality Built" program, a third-party quality assurance inspection program.

In 1999, Luhr founded QualityBuilt.com as a litigation support company that employed the Quality Built, LLC program. Luhr hired Elizabeth Michaelis to work at QualityBuilt.com as its Vice President of Sales.⁴

Circa 2002, QualityBuilt.com launched its website, www.qualitybuilt.com, and Luhr promoted Michaelis to Vice President of QualityBuilt.com.

Circa 2003, Luhr then promoted Michaelis to the dual roles of Vice President and Chief Financial Officer of QualityBuilt.com.

Circa 2004, Luhr promoted Michaelis to the dual roles of President and Chief Financial Officer of QualityBuilt.com; Luhr maintained the title of Chief Executive Officer of QualityBuilt.com.

In 2006, QualityBuilt.com was hired by The Gates' general contractor/developer pursuant to an insurance requirement for a third party to perform quality assurance inspection services for construction of The Gates. In turn, apparently unknown to anyone at that time and definitely unknown by Plaintiffs until 2014, QualityBuilt.com hired Criterium Engineers to perform the inspection services at The Gates. *Criterium* employees submitted *Quality Built* inspection reports and project billing summaries, used *Quality Built* vehicle signage, and wore *Quality Built* shirts and hats to disguise themselves as *Quality Built* employees. (Michaelis Dep., 22:4-22:8, 23:2-26:5, 37:4 to 37:12, Exh. G; Criterium Agreement, Exh. H).

⁴ According to Michaelis, Luhr hired Michaelis as Vice President of Sales at QualityBuilt.com in 1996 – three (3) years before QualityBuilt.com was formed (Michaelis Dep. 11:22-12:4, Exh. G).

In March 2007, QualityBuilt.com obtained certification with The International Standards Organization ("ISO") by the hands-on work of QualityBuilt.com President and CFO Michaelis (Michaelis Dep., pp. 122:9-123:25, Exh. G); 2008 QualityBuilt.com Web Pages, Exh. I). (This becomes relevant later in the chronology when Quality Built, LLC takes credit for the ISO certification).

In mid-2009, Quality Built, LLC was formed by incorporation with *two-thirds of its executive staff comprised of QualityBuilt.com principal executives:*

QualityBuilt.com Chief Executive Officer and 50% Equity Security Holder Stan Luhr held the title of Quality Built, LLC Chief Technical Officer and Principal;

QualityBuilt.com President, Chief Financial Officer, and 50% Equity Security Holder Elizabeth Michaelis held the title of Quality Built, LLC President; and

Brian Kramer, the only executive who did not come from QualityBuilt.com, held the title of Quality Built, LLC Chief Executive Officer.

(Michaelis Dep. 14:1-14:8 and 16:17-16:22, Exh. G; Quality Built, LLC Employment Agreement Extract from Quality Built, LLC Asset Purchase Agreement, Exh. J; QualityBuilt.com US Bankruptcy Court (SDC), Voluntary Petition, Exh. K).

In late 2009, QualityBuilt.com filed for Chapter 11 Bankruptcy in the United States Bankruptcy Court, Southern District of California, Case No. 09-12113-PB11.

In February 2010, Quality Built, LLC's Managing Member and Head of its Board of Directors, Gary Elzweig, submitted an affidavit confirming Quality Built, LLC retained Luhr and Michaelis to serve as Quality Built, LLC's Chief Technical Officer and President, and each held 5% common equity interest. (Elzweig Aff, Exh. L).

In March 2010, the Southern District of California Bankruptcy Court issued an Order approving a Section 363 "Free and Clear" sale of QualityBuilt.com's assets to Defendant Quality

Built, LLC and authorized entry of an Asset Purchase Agreement between Quality Built, LLC and QualityBuilt.com (the "Sale Order" and "Purchase Agreement", Exhibits A and B to Quality Built, LLC Motions).

Also in March 2010, Quality Built, LLC issued a press release that advertised to the public that it was a "newly *restructured* firm" that retained QualityBuilt.com Founders Luhr and Michaelis as Chief Technical Officer and President. (Quality Built, LLC Press Release, Exh. M) (emphasis added).

Circa 2010 – *one year after Quality Built, LLC was formed and incorporated* – Quality Built, LLC advertised itself to the public on the QualityBuilt.com website, www.QualityBuilt.com, as having experience dating back to 1995 – a year after Stan Luhr developed the Quality Built, LLC program:

Fifteen years ago, when insurance carriers refused to insure construction in California, Quality Built went to all the major financial centers in the United States as well as those in London, Dublin and the Bahamas. We met with insurance carriers and provided them with data to demonstrate that construction was not the blind risk they thought it was, provided that construction companies implement proper quality control and inspection systems to assure the quality of construction. We rolled out our risk management program that has since become the standard for underwriting construction for over 30 insurance carriers. In fact, Quality Built created all of the compliance metrics that are used today by most insurance carriers.

(2010 Quality Built, LLC Web Pages, Exh. N) (emphasis added).⁵

In 2011 – *two years after Quality Built, LLC allegedly commenced business* - Quality Built, LLC advertised itself to the public on the QualityBuilt.com website, www.QualityBuilt.com, as the only United States company with ISO certification that it held since 2007:

⁵ Circa 2010, approximately nine months after Luhr assisted in forming Quality Built, LLC, Quality Built, LLC President Kramer terminated Quality Built, LLC CEO Luhr. (Michaelis Dep., 17:2-18:5, Exh. G).

Quality Built™ is the only construction risk inspection firm in the United States that has been awarded a certification from The International Standards Organization (ISO). In 2007, Quality Built received its first certification, ISO 9001:2000, and in March 2010, ISO recertified Quality Built under ISO 9001:2008.

Quality Built is the only construction inspection risk management solution company in the United States that has achieved the highly coveted ISO Certification from the International Standards Organization assuring after rigorous evaluation that Quality Built's systems and work product produces standardized and consistent levels of quality and accuracy.

(2011 Quality Built, LLC Web Pages, Exh. O) (emphasis added).

In 2012 – *when Quality Built, LLC was allegedly in business for just three years* – Quality Built, LLC advertised to the public on the QualityBuilt.com website, www.QualityBuilt.com that Beth Michaelis had been with the “Quality Built Organization” for thirteen years - which would date back to circa 1999, the year Stan Luhr formed QualityBuilt.com:

Beth [Michaelis] is President of Quality Built®, the nation's leading construction quality assurance firm. In her more than 13 years with the Quality Built® organization, Beth continues to expand Quality Built's risk management and quality assurance line of services, with a special focus on cultivating large builder and insurance industry relationships.

(2012 Quality Built, LLC Web Pages, Exh. P) (emphasis added).

STANDARD OF REVIEW

Defendant Quality Built, LLC has moved this Court to dismiss Plaintiffs' claims against Quality Built, LLC under Rule 57, SCRCP, and the Uniform Declaratory Judgments Act, S.C. Code §§ 15-53-10, *et seq.*, (the “Act”). Rule 57, SCRCP, provides for a party to bring suit for declaratory judgment in accordance with its rules and gives parties the right to a jury trial:

The procedure for obtaining a declaratory judgment pursuant to Code §§ 15-53-10 through 15-53-140, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. []

Under the Act, “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” S.C.Code Ann. § 15-53-20 (1976). The Act also provides the court with power to “determine [] any question of construction or validity arising under [an] instrument, [or] contract [] and obtain a declaration of rights, status or other legal relations thereunder.” S.C.Code Ann. § 15-53-30. Where issues of fact exist, the Act provides for a jury trial. S.C.Code Ann. § 15-53-90.

Quality Built, LLC has alternatively requested this Court dismiss Plaintiffs’ claims under Rule 56(c), SCRPC, which provides that summary judgment shall be granted only when no issues of fact exist. “The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.” *Matsell v. Crowfield Plantation Comm. Servs. Ass’n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011); *S.C. Prop. & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001) (“At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact.”).

“In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted); *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003) (“To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.”).

DISCUSSION

Quality Built, LLC’s Motion for Declaratory Relief should be dismissed as procedurally improper. Further, both the Motion for Declaratory Relief and for Summary Judgment should be

denied due to the genuine issues of material fact that exist as to whether Quality Built, LLC is liable for the acts and omissions of QualityBuilt.com. The admissions (marketing and conduct) discussed above evidence that Quality Built, LLC holds itself out as QualityBuilt.com's successor. The Courts of this State have held that such conduct by a successor entity is sufficient to justify application of the mere continuation exception to successor non-liability. Quality Built, LLC's contention that it is a separate entity distinct from its predecessor, QualityBuilt.com, simply raises a material issue of fact that bars summary judgment.

I. QUALITY BUILT'S MOTION FOR DECLARATORY RELIEF IS IMPROPER.

Quality Built, LLC's Motion for Declaratory Relief should be dismissed as improper. Under South Carolina law and practice, a declaratory judgment cause of action must be filed for a party to seek relief under the Act. Plaintiff did not seek a declaratory judgment; and as Quality Built has not filed a counterclaim for declaratory relief in this case, its motion is procedurally precluded and Quality Built, LLC is not in a position to request relief under the Act.

If any declaratory relief is granted as a result of this Motion, it should be a declaratory decree that neither the QualityBuilt.com Sale Order nor Purchase Agreement shields Quality Built, LLC from liability to Plaintiffs (See Sec. II). This is a straightforward, threshold legal determination that should be made at this stage in Plaintiffs' favor under Sections 15-53-20 and 15-53-30 of the Act. *In re Grumman Olson Industries, Inc.*, 445 B.R. 243, 247 (Bkrtcy. S.D.N.Y. 2011) (whether a bankruptcy sale order exonerates a successor from liability is a "straightforward, threshold legal question").

II. THE QUALITYBUILT.COM SALE ORDER AND PURCHASE AGREEMENT DO NOT SHIELD QUALITY BUILT, LLC FROM LIABILITY.

The QualityBuilt.com Sale Order and incorporated Purchase Agreement do not act as a shield for Quality Built, LLC to bar Plaintiffs' claims. The South Carolina Supreme Court has held a plaintiff with no pre-bankruptcy relationship to the debtor is not bound by a bankruptcy sale order or agreement, and is not bound to bring its claims under 11 USCA § 101(5):

[A]n individual has a § 101(5) claim [which is limited by the free and clear sale to *in rem* against the sale proceeds held by the Debtor] against a debtor manufacturer if (i) events occurring before confirmation create a relationship, such as contact, exposure, impact, or privity, between the claimant and the debtor's product; and (ii) the basis for liability is the debtor's prepetition conduct in designing, manufacturing and selling the allegedly defective or dangerous product. The debtor's prepetition conduct gives rise to a claim to be administered in a [bankruptcy] case only if there is a relationship established before confirmation between an identifiable claimant or group of claimants and that prepetition conduct.

Nationwide Mut. Ins. Co. v. Eagle Windows & Doors, Inc., 394 S.C. 54, 58-59, 714 S.E.2d 322, 325 (2011) (lower court decision to grant motion to dismiss based on sale order's express preclusion of state law actions reversed because plaintiff had no relationship with debtor prior to bankruptcy) (emphasis added) (quoting *Epstein v. Official Committee of Unsecured Creditors (In re Piper Aircraft Corp.)*, 58 F.3d 1573, 1577 (11th Cir.1995) (claimants that had no pre-bankruptcy relationship with debtor held not to have Section 101(5) claims)).

Quality Built, LLC relies on the "plain language" of the Sale Order and Purchase Agreement to argue "Defendant did not assume the liabilities of QualityBuilt.com so as to be liable to the Plaintiffs []". (Quality Built, LLC Motion, p. 7). In support, Quality Built, LLC cites to several protective provisions from the Sale Order and Purchase Agreement; however, Quality Built, LLC fails to note that these provisions only prohibit *in rem* claims against purchased

bankruptcy assets by claimants that had a pre-bankruptcy relationship with the bankrupt-predecessor. These provisions do nothing to protect against Plaintiffs' claims.

The courts in this jurisdiction have dealt with protective provisions similar to those at issue here, and found the successor was not absolved of liability to a third party that had no prior relationship with a bankrupt-predecessor. In *Nationwide*, our Supreme Court found a third party was not bound by a purchase agreement provision that stated a successor was: "only a purchaser of the Assets", "not a successor in interest", and "not subject to any liability whatsoever with respect to the operation of [the predecessor's] business ... based ... on any theory of law or equity including ... successor ... liability." 394 S.C. at 60, 714 S.E.2d at 325. The Court held the third parties' claims did not arise under the sale order or purchase agreement and, therefore, while this provision "facially appears to support the circuit court's decision [to dismiss the plaintiff's claims], it does not." 394 S.C. at 60-61, 714 S.E.2d at 325. The Court further noted that "[n]othing" in the "Free and Clear" provisions barred claims against the debtor's successor:

[the] bankruptcy order [] discharged respondent from all claims "arising before the sale of the assets" directing that any such claims "attach" to the sale proceeds. This paragraph refers to an action *in rem* against the proceeds paid to the debtor, while a post-sale tort action against the successor entity is not an action against the sale proceeds received by the debtor, but rather an *in personam* action against the successor itself. [] Nothing in Paragraph I bars this suit.

Nationwide, 394 S.C. at 60-61, 714 S.E.2d at 325-326 (citing *In re Grumman*, 445 B.R. at 250 ("The Sale Order did not give [successor] a free pass on future conduct, and the suggestion that it could is doubtful.")); *Simmons v. Mark Lift Industries, Inc.*, 366 S.C. 308, 309-313, 622 S.E.2d 213, 214-215 (2005) (third party with no pre-bankruptcy relationship to predecessor allowed to proceed with claims against successor despite protective provisions in purchase agreement); *see also Schwinn Cycling & Fitness Inc. v. Benonis*, 217 B.R. 790, 796-97 (N.D.Ill.

1997) (sale order “was not intended to, nor could it, preempt all possible future successor liability claims”).

In *Holloway v. John E. Smith's Sons Co., Div. of Hobam, Inc.*, 432 F.Supp. 454, 455-56 (D.S.C. 1977), the South Carolina District Court denied summary judgment to the successor of a bankrupt entity and allowed the claims of a third party that had no pre-bankruptcy relationship with the bankrupt-predecessor to proceed. As part of its analysis, the *Holloway* Court looked to the reasoning of *Cyr v. B. Offen & Co., Inc.*, 501 F.2d 1145, 1153 (1 Cir. 1974). In *Cyr*, the First Circuit also found the protective language of a purchase agreement did not prohibit a third party from bringing its claims against a successor entity: “the protective language in the purchase agreement, specifically excluding the assumption of any tort liability...cannot determine the rights of third parties [.]” *Cyr*, 501 F.2d at 1153.

Notably, Quality Built, LLC cites no relevant authority to support its position. The only case dealing with bankruptcy that Quality Built, LLC cites, *McNaughton-McKay Elec. Co. of NC, Inc. v. Andrich*, 324 S.C. 275, 280 (Ct. App. 1996), does not address successor liability. Instead, *McNaughton-McKay* concerns a bankruptcy creditor who sought restoration of a bankruptcy action to collect the debt owed to him after the debtor fell behind on his payments. *Id.* at 278-80.

Just as in *Nationwide*, *Simmons*, and *Holloway*, the QualityBuilt.com Sale Order and Agreement provisions here are not binding on Plaintiffs as third parties with no pre-bankruptcy relationship with QualityBuilt.com. Thus, Plaintiffs have a right to bring their claims under state law, rather than under Section 101(5):

Having established that they are not § 101(5) claimants, whether appellants will be able to hold respondent liable under a successor liability theory is a question of state law. [] If appellants can establish that

respondent's conduct meets one or more of the [*Brown v. American Ry. Express Co.*] tests, then respondent may be liable to them.

Nationwide, 394 S.C. at 60, 61, 714 S.E.2d at 325 (citing *Simmons*, 366 S.C. 308, 622 S.E.2d 213; *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97, 98-99 (1924)).

If this Court entertains a declaratory motion, it should declare that the bankruptcy order and sales agreement do not bar Plaintiffs' claims.

III. ISSUES OF FACT EXIST AS TO WHETHER QUALITY BUILT, LLC IS LIABLE FOR THE ACTS AND OMISSIONS OF ITS PREDECESSOR QUALITYBUILT.COM UNDER THE MERE CONTINUATION EXCEPTION TO SUCCESSOR NON-LIABILITY.

The record shows genuine issues of material fact exist as to whether Quality Built, LLC is liable for the acts and omission of its predecessor, QualityBuilt.com, under the mere continuation exception to successor non-liability. The South Carolina Supreme Court has held that a successor entity will not usually be liable for its predecessor's liabilities unless it falls within one of the exceptions to successor liability:

[A] plaintiff may maintain a state law-based [] claim under a successor liability theory against a successor corporation which purchased the predecessor's assets in a voluntary sale approved by the federal bankruptcy court **provided** one of the exceptions set forth in the *Brown* opinion applies.

Simmons, 366 S.C. at 312-13, 622 S.E.2d at 215 (citing to *Brown*, 128 S.C. 428, 123 S.E. 97) (emphasis in original).

One of the four exceptions to successor non-liability under the *Brown* test is the "mere continuation" exception:

In the absence of statute, in order to render a purchasing company liable for the debts of the selling corporation, it must appear: (1) there was an agreement to assume such debts, (2) the circumstances surrounding the transaction warrants a finding of a consolidation or merger of the two corporations, (3) the successor company was a mere continuation of the

predecessor, or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claim

Brown, 128 S.C. 428, 123 S.E. 97, 98-99 (emphasis added) (successor corporation that purchased part of predecessor's assets was not liable for lost shipment by predecessor where successor did not assume liability for debts and predecessor remained a live and going concern with substantial assets); *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 305-06 (Ct. App. 2008) (“[A] successor company is not ordinarily liable for the debts of a predecessor company under a theory of successor liability unless ... (c) the successor company was a mere continuation of the predecessor company...”).

South Carolina Courts have found the most critical factor in applying the mere continuation exception to successor liability is whether the successor shares some of the same officers, directors, and/or shareholders. *Simmons*, 366 S.C. at 316 n. 1; 622 S.E.2d at 215 n. 1 (mere continuation exception applicable only when “predecessor and successor corporations have substantially the same officers, directors, or shareholders”)); *Walton*, 376 S.C. at 307 (mere continuation exception not applied because successor had no common officers or directors). It has not been decided what extent of management or ownership overlap is necessary to support a mere continuation theory; it would appear as though once Plaintiff shows some overlap, the mere continuation determination presents a question for the jury.

Courts will also consider a successor's other conduct in determining whether to apply the mere continuation exception. One “noteworthy” factor is whether the successor uses the same name as its predecessor and thus holds itself out to the public as the same entity, as well as whether the successor produces the same type of business as its predecessor. *Holloway*, 432 F.Supp. at 456 (mere continuation exception applied and summary judgment motion by successor denied because successor produced same/similar products under same supervision and

used same name as predecessor) (citing *Cyr*, 501 F.2d 1145, 1151 (successor that used predecessor's name, advertised itself using predecessor's experience, and produced same product in same way as predecessor was not immune from predecessor's liability)).

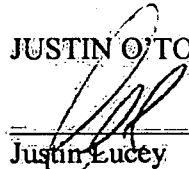
Since its 2009 formation, Quality Built, LLC has presented itself as a seamless continuation of QualityBuilt.com in multiple ways that show it is a mere continuation of its predecessor: in its first year, two of Quality Built, LLC's three founding executives were predecessor QualityBuilt.com principal executives and 100% Equity Security Holders; from 2010 until today, one of its two executives was a predecessor QualityBuilt.com principal and 50% Equity Security Holder; Quality Built, LLC continuously markets itself on its website and in its press releases with a nearly identical name as its predecessor and capitalizes on its Predecessor's experience under the umbrella of the "Quality Built Organization"; and Quality Built, LLC produces the same type of business under the "Quality Built" Program created in 1994 by Stan Luhr, who was both the Former Quality Built, LLC Principal/Chief Technical Officer and the Former QualityBuilt.com Founder/Chief Executive Officer and 50% Equity Security Holder. (2008 and 2011 Web Pages, Exh. I and O; QualityBuilt.com US Bankruptcy Court (SDC), Voluntary Petition, Ex. K). Quality Built, LLC even claims to have been certified in 2007 by the ISO. In its Motions, Quality Built, LLC fails to cite any authority or evidence to show why its adoption of predecessor QualityBuilt.com should not trigger the "mere continuation" exception to successor liability.

Clearly, Plaintiffs have raised a jury question as to whether Quality Built, LLC, is a mere continuation of Quality Built.com.

CONCLUSION

Based on the foregoing, this Court should deny Quality Built, LLC's Motion for Declaratory Relief as procedurally improper; or in the alternative, deny it due to the presence of genuine issues of material fact; and issue a decree that Quality Built, LLC is not shielded from liability to Plaintiffs by the QualityBuilt.com Sale Order and incorporated Purchase Agreement. The Court should also deny Defendant Quality Built, LLC's Motion for Summary Judgment because of the presence of genuine issues of material fact as to movant's post-petition conduct that evidences its successor liability.

JUSTIN O'TOOLE LUCEY, P.A.

By: 

Justin Lucey

Stephanie Drawdy

415 Mill Street

Post Office Box 806

Mount Pleasant, SC 29465-0806

(843) 849-8400 phone

(843) 849-8406 fax

Charleston, South Carolina

March 8, 2017

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Justin O'Toole Lucey, P.A., attorney for the Plaintiffs, do hereby certify that I have served the below listed counsel and parties in this action with a copy of the *Plaintiffs' Memorandum In Opposition to Defendant Quality Built, LLC's Motion for Declaratory Relief, Or In the Alternative, Motion for Summary Judgment* by sending a copy of same via email and/or U.S. Mail:

VIA EMAIL

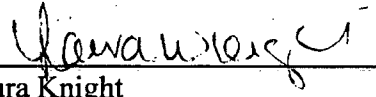
Alan R. Belcher, Esq.
Elizabeth F. Wieters, Esq.
Hall Booth Smith, PC
40 Calhoun St., Ste. 550
Charleston, SC 29401

VIA EMAIL & US MAIL

Kent Stair, Esq.
Robin Graham, Esq.
Carlock Copeland
40 Calhoun Street, Suite 400
Charleston, SC 29401

This 8 day of March, 2017
Charleston, South Carolina

By: _____


Laura Knight

AUSTIN LAW

1 Little West 12th Street
New York, New York 10014
Telephone: (212) 252-2012

nigel@austinlawpllc.com

January 28, 2014

Via Email: office@lucyey-law.com

Justin O'Toole Lucey, PA
415 Mill Street
Mount Pleasant, SC 29464
Attn: Justin O'Toole Lucey, Esq.

Re: The Gates at Williams-Brice Condominium Association, et al v. Quality Built, LLC
Case No. 2013-CP-40- 7729

Dear Mr. Lucey:

We are writing as counsel for Quality Built, LLC in reference to the Summons and Complaint in respect of the above matter.

The above referenced matter relates to a contract entered into by Qualitybuilt.com, a California corporation and debtor-in-possession. Pursuant to the attached Sales Order entered into on March 12, 2010 by the U.S. Bankruptcy Court for the Southern District of California, substantially all of the assets of Qualitybuilt.com were transferred to Quality Built, LLC free and clear of all Claims (except for specified Assumed Liabilities). All rights and claims under the above referenced contract with Qualitybuilt.com did not constitute an Assumed Liability under the above referenced Sales Order and, accordingly, Quality Built, LLC has no liability or obligation thereunder without any successor liability whatsoever to Qualitybuilt.com. For your convenience, service of complaints against Qualitybuilt.com should be made to Mr. Stan Luhr, 1939 Friendship Drive, Suite E, El Cajon, CA 92020.

We request that you promptly voluntarily dismiss with prejudice this matter against Quality Built, LLC. Please confirm to me at your earliest convenience that you will dismiss this Summons and Complaint and contact me with any questions.

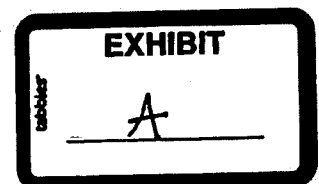
Very truly yours,

Austin Law PLLC

By: Nigel S. Austin
Nigel S. Austin, Esq.

cc. Elizabeth Michaelis - Quality Built, LLC

ROA_00346



JUSTIN O'TOOLE LUCEY, PA

Attorney at Law

Justin Lucey
Joshua F. Evans
Stephanie D. Drawdy
Harper L. Todd
Dabny Lynn
Mary A. Matthews

415 Mill Street, Mount Pleasant, SC 29464
Phone: 843.849.8400 • Fax: 843.849.8406 • office@lucy-law.com

Reply to:
P.O. Box 806
Mount Pleasant, SC 29465

March 12, 2014

BY REGULAR & ELECTRONIC MAIL

Nigel S. Austin, Esq.
Austin Law PLLC
1 Little West 12th Street
New York, New York 10014

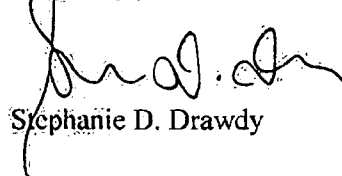
Re: The Gates at Williams-Brice Condominium Assoc. v. DDC Construction, Inc., et al
Case No.: 2012-CP-40-8512

Dear Mr. Austin:

As you may recall, we represent the Plaintiffs in the above referenced action. We are currently reviewing the Bankruptcy Court Sales Order you forwarded under cover of your January 28 letter and will write you shortly regarding that Order and the suit against your client.

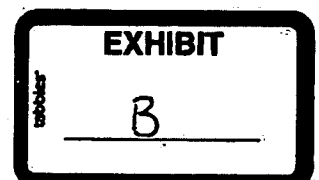
Regards.

Very truly yours,



Stephanie D. Drawdy

ROA_00347



JUSTIN O'TOOLE LUCEY, PA

Attorney at Law

Justin Lucey
Joshua F. Evans
Stephanie D. Drawdy
Harper L. Todd
Dabny Lynn
Mary A. Matthews

415 Mill Street, Mount Pleasant, SC 29464
Phone: 843.849.8400 · Fax: 843.849.8406 · office@lucey-law.com

Reply to:
P.O. Box 806
Mount Pleasant, SC 29465

May 14, 2014

**VIA US MAIL AND
FACSIMILE (858)454-9596**

Ms. Leslie T. Gladstone
Trustee, QualityBuilt.com
401 Via Del Norte
La Jolla, CA 92037

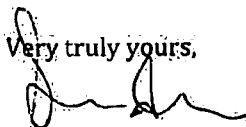
Re: Name of Debtor: QualityBuilt.com
Case Number: 09-12113-PB7

Dear Ms. Gladstone:

We represent the Plaintiffs in *The Gates at Williams-Brice Condominium Assoc., et al v. Quality Built, LLC* (Case No.: 2013-CP-40-7729), a construction defect suit filed in Richland County, South Carolina, on December 27, 2013. The Plaintiffs in this suit have an unliquidated claim against Quality Built for inadequate performance of inspection services at the condominium complex at issue. Prior to filing a proof of claim, we would like to confirm whether there is available insurance to cover the Plaintiffs' claim. When I spoke with your assistant, Candy, yesterday, she suggested I put my request for information in writing to you. I would very much appreciate any information you could provide.

Best regards.

Very truly yours,


Stephanie D. Drawdy

/lwk

ROA_00348

EXHIBIT

C

JUSTIN O'TOOLE LUCEY, PA

Attorney at Law

415 Mill Street, Mount Pleasant, SC 29464

Phone: 843.849.8400 Fax: 843.849.8406 office@lucy-law.com

Justin Lucey
Joshua F. Evans
Stephanie D. Drawdy
Dabny Lynn
James L. Floyd, III

Reply to:
P.O. Box 806
Mt. Pleasant, SC 29465

October 29, 2015

BY REGULAR & ELECTRONIC MAIL

Nigel S. Austin, Esq.
Austin Law PLLC
1 Little West 12th Street
New York, New York 10014

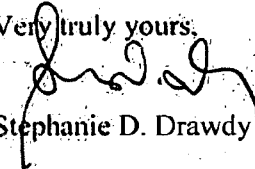
RE: The Gates at Williams-Brice Condominium Assoc., et al v. Quality Built, LLC
Case No.: 2013-CP-40-7729

Dear Mr. Austin:

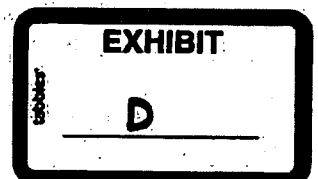
I am writing in regard to the above referenced matter. On December 27, 2013, Plaintiffs filed the Summons and Complaint against Quality Built, LLC with Richland County Court of Common Pleas. On January 21, 2014, Plaintiffs served the Summons, Complaint and Plaintiffs' First Set of Discovery Requests by certified mail, restricted delivery, return receipt requested on the Registered Agent for Quality Built, LLC. To date, Quality Built, LLC has not answered Plaintiffs' Complaint. **Plaintiffs will be forced to file a Motion for Default Judgment against Quality Built, LLC on Friday, November 6, 2015, unless Quality Built, LLC answers Plaintiffs' Complaint in the above referenced matter.**

Best regards,

Very truly yours,


Stephanie D. Drawdy

ROA_00349



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Gates at Williams-Brice, et al.

Plaintiff,

vs.

Quality Built, LLC

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 13-7729
2014 CP 40-7229

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Justin Lucey, Bar No. _____ Address: 415 Mill Street, Mt. Pleasant SC 29464 Phone: 843-849-8400 Fax _____ E-mail: jlucey@lucey-law.com Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Amend Complaint Estimated Time Needed: 15 mins Court Reporter Needed: ☐ YES ☒ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

ROA_00350

EXHIBIT

E

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-7729

THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, individually, and on)
behalf of all others similarly situated,)

Plaintiffs,)

vs.)

QUALITY BUILT, LLC, and COAST TO)
COAST ENGINEERING SERVICES, INC.)
D/B/A CRITERIUM ENGINEERS,)

Defendants.)

MOTION TO
AMEND COMPLAINT

2014/07-5 PM 9:28
CLERK OF COURT

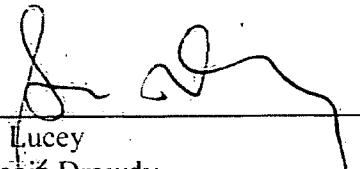
COMES NOW the Plaintiffs, The Gates At Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated, ("Plaintiffs"), by and through its undersigned counsel, and hereby moves this Court for an Order allowing Plaintiffs leave to amend the Complaint in order to conform to the evidence and to add claims against a new party as adduced in deposition testimony. Plaintiffs' proposed Amended Complaint is attached hereto as Exhibit "I."

South Carolina Rules of Civil Procedure, Rule 15 (b) states that "[s]uch amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time."

WHEREFORE, pursuant to SCRCP, Rule 15 (b), Plaintiff prays that this Court grant their Motion to Amend Complaint.

JUSTIN O'TOOLE LUCEY, P.A.

By:



Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
Charleston, South Carolina
(843) 849-8406

October 30, 2015

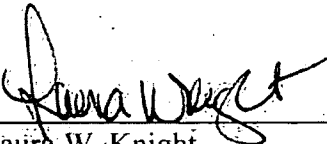
CERTIFICATE OF SERVICE

I hereby certify that I have this date, mailed, postage prepaid, a true and correct copy of *Plaintiffs' Motion to Amend Complaint* to the following counsel and parties as follows:

Via Secretary of State

Quality Built, LLC
c/o Corporation Service Company
2711 Centerville Rd Ste 400
Wilmington, DE 19808

By:



Laura W. Knight

This 30 day of October, 2015
Charleston, South Carolina

2015 NOV -5 AM 9:28
CORPORATION SERVICE COMPANY

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-7729



THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, individually, and on)
behalf of all others similarly situated,)

Plaintiffs.)

vs.)

QUALITY BUILT, LLC, and COAST TO)
COAST ENGINEERING SERVICES, INC.)
D/B/A CRITERIUM ENGINEERS.)

Defendants..)

AMENDED COMPLAINT

The Plaintiffs, The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff The Gates at Williams-Brice Condominium Association (the "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The Association is the property owners association for the Williams-Brice Horizontal Property Regime.

3. The Williams-Brice Horizontal Property Regime is a Horizontal Property Regime that exists by virtue of a Master Deed dated July 2, 2007 and recorded July 11, 2007 in the RMC Office of Richland County, South Carolina in Book 1334-2002.

4. The Gates consists of one hundred fifty-eight (158) condominiums located in six (6) buildings and related common elements, which are located behind the Williams-Brice

Stadium in Columbia, South Carolina. The condominiums and common and limited common elements are hereinafter referred to collectively as "The Gates."

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, et. seq., the Association is charged with certain duties, powers, rights and authority in connection with The Gates.

6. The Association is charged with, inter alia, the management and administration of The Gates, the investigation, maintenance and repair of The Gates's Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of The Gates, the Association, and the respective owners and members.

7. Plaintiff Katharine Swinson (hereinafter "Plaintiff Swinson"), is a citizen of Richland County, South Carolina and is an owner of a condominium within The Gates, more particularly described as 1085 Shop Road, Unit 435, Columbia, South Carolina, 29201.

8. Plaintiff Swinson purchased the above-described real property in 2010.

9. By virtue of property ownership in The Gates, Plaintiff Swinson is a member of the Association, has been a member of the Association at all times relevant hereto, and has ownership and membership rights relating thereto.

10. Circa 1994, Qualitybuilt.com was organized as a corporation under the laws of the State of California.

11. Qualitybuilt.com was contracted to provide and/or perform onsite quality control, including review of construction and repairs of defective conditions, among other work, at The Gates, during the original construction of The Gates.

12. Circa 2009, Qualitybuilt.com filed Chapter 11 bankruptcy in the United States Bankruptcy Court, Southern District of California, *In re Qualitybuilt.com*, Bankruptcy No. 09-12113-PB11.

13. Defendant Quality Built, LLC (hereinafter "Quality Built") is a foreign corporation organized and existing under the laws of the State of Delaware

14. Defendant Quality Built, LLC currently possesses the assets, business, intellectual property and goodwill of Qualitybuilt.com.

15. Defendant Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers (hereinafter "Criterium") is a foreign corporation organized and existing under the laws of the State of Maine.

16. Criterium provided and/or performed onsite quality control, including review of construction and repairs of defective conditions, among other work, at The Gates, during the original construction of The Gates.

17. Defendant Criterium acted as consultant for Qualitybuilt.com while providing and/or performing onsite quality control at The Gates.

18. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

19. This matter arises out of the construction, repair and sale of The Gates.

20. At the time the Certificates of Occupancy were issued, The Gates contained latent building defects.

21. The latent building defects, in combination with fortuitous weather, repeated water intrusion, and/or other events, have resulted in consequential damage to non-defective building components and other property.

22. A preliminary inspection of The Gates evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components,

and other property. Inspection also reveals failure of other various building components, including widespread spalling, with consequential damages resulting therefrom.

23. Defendants had a duty to perform onsite quality control during construction of The Gates to ensure it was performed in a workmanlike manner and free from all defects.

24. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

25. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

26. Remedying the above-wrongs will result in additional consequential damages and loss of use.

27. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring in each and every year since the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

28. Circa 2004, Qualitybuilt.com contracted with Criterium to be an independent consultant for Qualitybuilt.com.

29. From 2006 to 2007, Criterium employees were on site at The Gates and represented themselves as Qualitybuilt.com employees.

30. While on site at The Gates, Criterium performed quality control work on behalf of Qualitybuilt.com.

31. Circa 2010, Quality Built purchased substantially all of Qualitybuilt.com's assets.

32. Although Quality Built was not created until July 2009, it claims on its website that it was founded in 1994 with twenty-one (21) years of experience. See Exhibit A.

33. Quality Built could only have twenty-one years of experience if, in fact, it is a

continuation of Qualitybuilt.com.

34. Quality Built continues to avail itself of the benefits of the Qualitybuilt.com assets, trademark, and business while hiding from the Qualitybuilt.com liabilities.

35. Quality Built possesses the corporate records, trademark, server, and other property of Qualitybuilt.com

36. Quality Built has the same president as Qualitybuilt.com, Beth Michaelis.

37. Qualitybuilt.com was subsumed by Quality Built.

38. Quality Built is the successor to Qualitybuilt.com as it is a mere continuation and under the continuity of enterprise doctrine.

39. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

CLASS ACTION ALLEGATIONS

40. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Swinson brings this action both individually and as a proposed class action against Defendants on behalf of herself and all other similarly situated persons and entities, who own a condominium within The Gates (hereinafter collectively referred to as the "Class"). The Class is more particularly defined as follows:

All persons and entities that own a condominium within The Gates located in the City of Columbia, Richland County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a

timely request for exclusion from the Class.

41. *Numerosity*: The Class is composed of in excess of one hundred fifty persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

42. *Commonality*: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

- a) Whether the construction and/or repair of The Gates was defective;
- b) Whether Defendants knew or should have known of the defects;
- c) Whether Defendants were negligent in this quality control;
- d) Whether Defendants have acted or refused to act on grounds generally applicable to the Class; and
- e) Whether Plaintiffs and the Class are entitled to damages, including, among other things: (i) compensation for all out-of-pocket monies expended for repair of the condominiums, as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use.

43. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in constructing The Gates.

44. *Adequate Representation*: Plaintiff Swinson will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Swinson has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

45. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to

other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

46. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Gates.

47. Plaintiff Swinson and the Class envision no unusual difficulty in the management of this action as a class action.

48. Each Class Member has an interest of more than \$100.00.

49. The amount of money at stake for each Class Member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND
TOLLING OF APPLICABLE STATUTES OF LIMITATIONS**

50. Defendants are estopped from relying on any statutes of limitation or repose by virtue of their acts. Upon information and belief, Defendants should have known The Gates was defectively constructed and failed to alert the Plaintiffs of The Gates' defective condition.

51. Defendants had a duty to inform Plaintiffs of the defects described herein, which they should have known. Notwithstanding their duty, Defendants never disclosed the defects to

Plaintiffs.

52. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective conditions of The Gates.

53. Given Defendants' failure to disclose this non-public information about the defective nature of The Gates - information over which they had exclusive control - and because Plaintiffs could not reasonably have known of The Gates's defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

54. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

55. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

56. At all times relevant hereto, the Defendants, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the inspection of the construction of The Gates.

57. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

- a) In failing to adequately effect quality control for construction of The Gates in accordance with due care and in accordance with standard building practices;
- b) In failing to adequately effect quality control for construction of The Gates in accordance with the plans and specifications;
- c) In failing to adequately effect quality control for construction of The Gates in accordance with the building code;
- d) In failing to act as a reasonable person would in the circumstances then and there prevailing; and

e) Such other failures to be proven at trial.

58. Plaintiffs have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

59. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty)

60. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

61. The inspection of the construction of The Gates came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that The Gates would be constructed with suitable materials and components and free from all defects and be of superior quality befitting an upscale condominium complex.

62. The inspection of the construction of The Gates, and the components used therein, came with implied warranties of workmanship and due care.

63. Defendants have breached their warranties by providing quality control oversight and supervision that resulted in construction of The Gates in a defective manner as set forth above.

64. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION
(Successor Liability as to Quality Built)

65. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

66. Quality Built is the successor to Qualitybuilt.com as it is a mere continuation of Qualitybuilt.com and/or has continuity of enterprise.

67. As the successor, Quality Built is responsible and liable for the obligations of Qualitybuilt.com, including the cost of repair, loss of use, and any judgments thereon.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; and granting such further relief as the Court deems just and proper.

JUSTIN O'TOOLE LUCEY, P.A.

By:

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

Charleston, South Carolina
October 29, 2015



800.547.5125

401 SE 12th St., Ste. 200
Fort Lauderdale, FL 3331615950 Bernardo Center Dr., Ste. C
San Diego, CA 92127

LOGIN GAIN

TRADE SIGNOFF

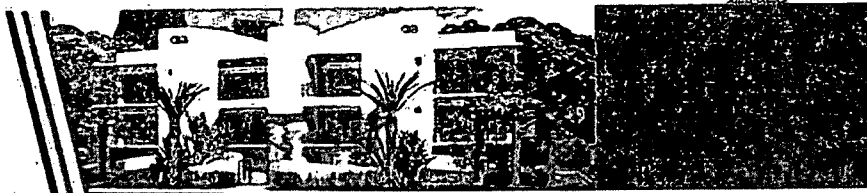
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A Foundation For Success

The Quality Built® program was founded in 1994 on extensive litigation experience and a long history of conducting inspections for the construction industry. Our experience includes an impressive and varied list of commercial and residential projects as well as a background of more than 2,000 litigation cases that have encompassed investigations of hundreds of diverse building performance and project failures. The lessons learned from analyzing and repairing these projects have formed the basis of the Quality Built® knowledge database, which is used to evaluate builder quality and minimize construction defects.

It is difficult to convey our knowledge and experience on a web site. Simply put, we have more data on construction than any other company in the world. Fifteen years ago, when insurance carriers refused to insure construction in California, Quality Built® went to all the major financial centers in the United States as well as those in London, Dublin and the Bahamas. We met with insurance carriers and provided them with data to demonstrate that construction was not the blind risk they thought it was, provided that construction companies implement proper quality control and inspection systems to assure the quality of construction. We rolled out our risk management program that has since become the standard for underwriting construction for over 30 insurance carriers. In fact, Quality Built® created all of the compliance metrics that are used today by most insurance carriers.

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4007729

Gates at Williams Brice Condominium Assn., et al.

Quality Built LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other Dismissed without prejudice _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court

ORDER INFORMATION

PLAINTIFF'S MOTION TO COMPEL IS WITHDRAWN.

PLAINTIFF'S MOTION TO AMEND COMPLAINT HAS BEEN RESOLVED BY CONSENT.

DEFENDANT'S MOTION FOR DECLARATORY RELIEF IS WITHDRAWN.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

E. J. Lucey

Judge Code 2126

Date 5-11-16

For Clerk of Court Office Use Only

This judgment was entered on the 7 day of May, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Justin O'Toole Lucey

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alan Ross Belcher Jr.; Elizabeth Wieters

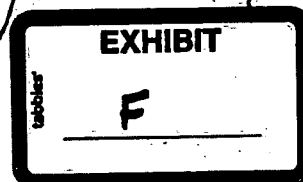
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeanette W. McBride

SCANNED



IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
RICHLAND COUNTY

THE GATES AT)
WILLIAMS-BRICE CONDOMINIUM)
ASSOCIATION AND KATHARINE)
SWINSON, INDIVIDUALLY AND)
ON BEHALF OF ALL OTHERS)
SIMILARLY SITUATED,)

Plaintiffs)

VS)

DDC CONSTRUCTION, INC.;)
KAPASI GLASS MART, INC.;)
DMC CONSOLIDATED, INC.;)
DMC BUILDERS, CO. INC.,)
INDIVIDUALLY AND D/B/A THE)
DINERSTEIN COMPANIES, DC)
DEVELOPERS - COLUMBIA)
CONDOS, INC.; COLUMBIA)
CONDOS, LP; DMC DEVELOPERS)
I, LTD.; 31-W INSULATION)
COMPANY, INC.; ASSOCIATED)
CONCRETE CONTRACTORS, INC.;)
BAILEY ELECTRIC COMPANY,)
LLC; C&B UTILITIES, LP;)
CAROLINA FLOOR SYSTEMS,)
INC.; CENTURY FIRE)
PROTECTION, LLC; CHEROKEE)
INC.; CORONADO STUCCO, LP;)
CROSS PLAINS CUSTOM TILE,)
INC.; LOWRY CONSTRUCTION &)
FRAMING INC.; LTB)
CONSTRUCTION, INC.; MARTIN)
MORALES JR. PAINTING &)
DRYWALL, LLC; METAL)
CONSTRUCTION MATERIALS,)
INC.; SOUTHWEST IRONWORKS,)
INC.; THE CLERKLEY/WATKINS)
GROUP, LP; TINDALL)
CORPORATION; TRIAD PEST)
CONTROL, INC.; WYMAN)
ACOUSTICS LLC; ALENCO)
HOLDING CORPORATION, ALENCO)
WINDOW GA, LLC, NEW ALENCO)

CASE NO. 2012-CP-40-8512

1 COMPANY; CROSBY WINDOW,)
 INC., F/K/A ACTION WINDOOR)
 2 TECHNOLOGY, INC.;)
 GEO-SYSTEMS DESIGN &)
 3 TESTING, INC.,; HGE)
 CONSULTING, INC.;)
 4 MAINTENANCE BUILDERS)
 SUPPLY, LTD.; SCA ENGINEERS))
 5 INC.; SINCLAIR & ASSOCIATES))
 INC.; FAULTLESS HARDWARE)
 6 INDIVIDUALLY AND D/B/A)
 PAMEX INC.; T&M CONCRETE,)
 7 INC.; LOVELESS COMMERCIAL)
 CONTRACTING, INC.; ECONOMY)
 8 WATERPROOFING, INC.; BMC)
 WEST CORPORATION; HIGHWAY)
 9 ONE CONSTRUCTION, INC.;)
 J.I. WINDOWS LLC; DEITRICH)
 10 INDUSTRIES, INC., A/K/A)
 DIETRICH METAL FRAMING,)
 11 INC., N/K/A CLARKWESTERN)
 DEITRICH BUILDING SYSTEMS)
 12 LLC; BEST MASONRY AND ITS)
 SUCCESSOR IN INTEREST, OLD)
 13 CASTLE APG; HEADWATERS,)
 INC. D/B/A BEST MASONRY;)
 14 AND JOHN DOES #1-10,)
)
 15 Defendants)
 16)
 17)

18 -----
 19 ORAL DEPOSITION OF
 20 BETH MICHAELIS
 21 AUGUST 5, 2014
 22 -----

22 REPORTED BY: SAMANTHA FALCONE
 MAGNA LEGAL SERVICES
 23 (866) 624-6221
 www.magnals.com
 24
 25

1 A. Four years.

2 Q. After that, please.

3 A. After that I went to work for Pacific
4 Property Consultants.

5 Q. Approximately what year would that be?

6 A. It would be about 1992, '93, somewhere in
7 there.

8 Q. And how did it come to pass that you went to
9 work for Pacific Property Consultants?

10 A. My next-door neighbor, Stan Luhr, owned the
11 company. He would talk to me a lot about problems
12 that he was having in his office, meaning that he was
13 out all the time on inspections and he needed somebody
14 there. And I said I could do that for him and so he
15 hired me to be his office manager and I went to work
16 there.

17 Q. What was the business of Pacific Property
18 Consultants?

19 A. They did expert witness work to defend
20 builders and developers involved in construction
21 defect litigation.

22 Q. And your next employment after that Pacific
23 Property Consultants, please.

24 A. QualityBuilt.com.

25 Q. Approximately when did that begin?

1 A. 1996.

2 Q. What was your position there?

3 A. I started out as -- let's see. I believe I
4 started out as VP of sales.

5 Q. And when you left Pacific Property
6 Consultants, what was your last position there?

7 A. Vice-president of operations.

8 Q. How long had you been vice-president of
9 operations?

10 A. Well, I -- I still worked for Pacific
11 Property Consultants even when I worked for Quality
12 Built, and so that would have been until 2009.

13 Q. So the companies -- you dual-tracked for
14 these two companies for a period of time?

15 A. Correct.

16 Q. And approximately how many years?

17 A. Well, between 1992 and 2009, however many
18 years that is.

19 Q. '92 to 2009 you were working for two
20 companies?

21 A. Yes.

22 Q. Okay.

23 A. Well, no. Two thousand -- 1992 to two
24 thousand -- to 1996 was just Pacific Property
25 Consultants. 1996 to 2009, two companies.

1 Q. Okay. And bring us forward for
2 QualityBuilt.com, your -- your role in
3 QualityBuilt.com, did you stay in VP of sales or did
4 you -- did you move up from there?

5 A. I was eventually made the president.

6 Q. Okay. And what was Mr. Luhr's role, if any,
7 in QualityBuilt.com?

8 A. Stan was the CEO.

9 Q. And so how did your two roles differ as a
10 practical matter for -- for somebody like me who is
11 not inside of either company?

12 A. Stan oversaw everything on the technical on
13 the construction side for the company, and I saw
14 everything on the sales and accounting side of the
15 company.

16 Q. Okay. So QualityBuilt.com eventually filed
17 bankruptcy?

18 A. Correct.

19 Q. What was the trigger on that, please?

20 A. Between 700 and 800 builders filing
21 bankruptcy on us, not being able to collect on
22 receivables.

23 Q. I thought it had to do with an arbitration
24 award.

25 A. Well, there was an arbitration award in

1 [sic] to perform QualityBuilt.com work?

2 A. Yes, we were.

3 Q. In what manner?

4 A. They were the sole independent consultant,
5 so they delivered all of the services outside of the
6 states of California and Hawaii.

7 Q. All right. And we're going to come back to
8 that, but let's just go finish our chronological
9 picture here, please.

10 Tell me about the start-up of Quality
11 Built, LLC.

12 A. Quality Built, LLC purchased the assets of
13 QualityBuilt.com through a 363 sale in the California
14 bankruptcy court in March 2010.

15 Q. And it continues to operate today?

16 A. Yes, it does.

17 Q. Who is -- what is your position today? You
18 told me already. President?

19 A. I'm president.

20 Q. Okay. Who else are -- are officers of the
21 company?

22 A. Brian Kramer is the CEO; and then up until
23 last week, Gary Elzweig was the managing member and --
24 and the head of the board of directors, but he sold
25 stock to Brian. So now Brian owns 60 percent of the

1 company.

2 Q. Before Gary's sale to Brian, how much did he
3 own?

4 A. How much did who own?

5 Q. Brian.

6 A. I believe he owned, like, 28 percent,
7 somewhere in there.

8 Q. And who owns the remaining 40 percent of
9 Quality Built, LLC?

10 A. I own ten percent and -- well -- and along
11 with other employees that own small shares of the
12 common stock. And then there's a group of investors
13 that own the remainder.

14 Q. And did the investors come in at the time of
15 the sale out of bankruptcy or are they more recent?

16 A. No, they came in at the time of the sale out
17 of the bankruptcy court.

18 Q. Does Mr. Luhr own any portion of Quality
19 Built, LLC?

20 A. No, he does not.

21 Q. Does he work for Quality Built, LLC directly
22 or indirectly in any way?

23 A. No, he does not.

24 Q. Has he since 2010?

25 A. Yes, he did. He started out with the

1. company.

2. Q. And what happened to that?

3. A. He was terminated about nine months in.

4. Q. Who terminated him?

5. A. Brian Kramer.

6. Q. For?

7. A. I don't know.

8. Q. Do you have any options to buy any
9. additional portion Quality Built, LLC?

10. A. No, I do not.

11. Q. And who are the other officers of Quality
12. Built, LLC today besides you and Brian Kramer?

13. A. There are no other officers.

14. Q. Who handles the technical side now?

15. A. Brian Kramer.

16. Q. And when did -- did you first work with
17. Brian Kramer in any entity of any type?

18. A. Just Quality Built, LLC. I didn't know him
19. prior to the acquisition.

20. Q. And when did you first work with Gary
21. directly or indirectly, regardless of what entity?

22. A. I never worked with him before the
23. acquisition. I knew him before then, but I didn't
24. work with him.

25. Q. Was Gary in charge of technical matters

1 superintendents, train the trade contractors, if
2 requested, and to help mitigate risk on-site and
3 provide documentation.

4 Q. And did your firm provide any training to
5 the superintendents on-site?

6 A. I don't know. This job was actually
7 serviced by an independent consultant, which is
8 Criterium Engineers.

9 Q. So you don't know if y'all provided training
10 to supervisors?

11 A. I do not know.

12 Q. And do you know whether or not y'all
13 provided training to the trades, if requested?

14 A. I do -- do not know.

15 Q. And who at Criterium Engineers would have
16 been the point person for The Gates job?

17 A. I don't know. My contact would have been
18 with Alan Mooney.

19 Q. And who is Alan Mooney?

20 A. He's the owner of Criterium Engineers.

21 Q. Where are they located?

22 A. Portland, Maine.

23 Q. And do they have a national footprint?

24 A. Yes, they do.

25 Q. Do they have other offices beside Maine?

1 A. I don't know.

2 Q. And on this job -- to start with, let's --
3 let's just talk about you for a second.

4 Did you have any contact of any kind
5 that you can recall with the job that Quality Built
6 performed at The Gates?

7 A. No, sir.

8 Q. Were you aware that it existed?

9 A. Yes, sir.

10 Q. Were you -- were you aware that it existed
11 before it commenced?

12 A. Yes, sir.

13 Q. Did you negotiate it?

14 A. Yes, I did.

15 Q. Tell me about that, please.

16 A. There was a -- a meeting at the offices and
17 I met with several people from the Dinerstein Company
18 and did a presentation on our company and the -- the
19 systems that we utilized, the -- our processes, and
20 then received word that we had won the contract.

21 Q. And the meeting at the offices, were these
22 your offices?

23 A. No, sir.

24 Q. The Dinerstein offices?

25 A. Yes.

1 Q. In Houston?

2 A. I believe it was in Houston.

3 Q. And do you recall who was present at this
4 meeting?

5 A. No, sir.

6 Q. Do you recall if Jack Dinerstein was
7 present?

8 A. I don't recall.

9 Q. Does the name Tom Caltagirone ring a bell?

10 A. It rings a bell, but I couldn't tell you if
11 he was there at the meeting.

12 Q. There's another Dinerstein, perhaps Ted
13 Dinerstein. Does that ring a bell?

14 A. No, it does not.

15 Q. How about Claude Arnold?

16 A. No.

17 Q. Hank Wilson?

18 A. No.

19 Q. Dale Toelkes?

20 A. No.

21 Q. Was there any representative from Lexington
22 Insurance present at this presentation?

23 A. I don't recall that there was.

24 Q. What about any representative from the --
25 the lender or the -- or the -- the finance entity for

1 The Gates being present?

2 A. I don't recall them being present.

3 Q. Do you recall your presentation occurring in
4 Houston at the Dinersteins being somehow facilitated
5 or instigated or originated because of insurance or
6 investors?

7 A. Yes, sir. It was a requirement of the
8 insurance policy that they select a third-party QA
9 provider that was -- that was approved to provide
10 periodic inspections.

11 Q. And that insurance company was Lexington?

12 A. I -- I don't recall that, but I've heard
13 that since.

14 Q. Was Lexington a prior client of yours?

15 A. They're -- yes, they -- they've been a
16 client for a number of years.

17 Q. Predating The Gates in 2006?

18 A. Yes.

19 Q. Was your presentation solely about The Gates
20 or was it on several Dinerstein projects?

21 A. It was -- there was a rolling wrap, I
22 believe. And so it was just a presentation on the
23 policy itself and what we could do to meet the
24 requirements of the insurance policy.

25 Q. And what would -- how would you explain what

1 a "rolling wrap" is to lay people?

2 A. It means that they have the ability to
3 incorporate additional projects into the insurance
4 policy whether they're named at that time or not, so
5 it's more than one project in a policy.

6 Q. And had you performed work for or with the
7 Dinersteins or any of their affiliates prior to this
8 presentation in Houston?

9 A. No, sir.

10 Q. And have you done other projects for or with
11 the Dinersteins or any of their affiliates since this
12 presentation besides The Gates?

13 A. Yes, we have.

14 Q. Tell me about those, please.

15 A. I did not look at them, and I don't recall
16 them. I know that there were three or four of them
17 that we did.

18 Q. Was another project located in Florida? Do
19 you recall?

20 A. I don't recall.

21 Q. Louisiana?

22 A. I don't recall.

23 Q. Would it be whatever other projects are on
24 that rolling wrap?

25 A. Yes, sir.

1 Q. Were the email records part of the sale from
2 .com to LLC?

3 A. No, sir.

4 Q. Did Criterium have Quality Built email
5 addresses?

6 A. I believe they did.

7 Q. Did Criterium, when conducting Quality Built
8 business, act and appear as if they were simply
9 Quality Built agents or employees?

10 A. They wore Quality Built shirts, Quality
11 Built hats. Their business cards would say,
12 Independent consultant for Quality Built. They
13 actually had a Criterium Engineers' logo and a --
14 matter of fact, their shirts did, too; they had both
15 the Criterium Engineer and the Quality Built logos on
16 them. Same for the hats, all the branding was
17 co-branding.

18 Q. And did you -- I believe we -- we
19 established that you did negotiate The Gates
20 engagement?

21 A. I did.

22 Q. And so would there be a document that would
23 set forth all of the services that your company would
24 be providing?

25 A. There would have been a contract, yes.

1 experience as -- in construction in a position that
2 made you familiar with the sequencing of products and
3 the integration of products and systems and then -- or
4 as an alternative to the ICPO certification you could
5 be a licensed contractor or you could be a licensed
6 architect or an engineer. And then Quality Built, on
7 top of that, required that you also get certification
8 from us on -- on their training.

9 Q. Was -- I think I saw somewhere else in the
10 documents that it was -- that QualityBuilt.com was the
11 only ISO certified quality assurance program or
12 something to that effect?

13 A. Correct.

14 Q. If I remember that correctly.

15 What did you have to do to be ISO
16 certified? What did QualityBuilt.com have to do to be
17 ISO certified, I should say?

18 A. An ISO certification was one of the most
19 rigorous and painful things that I've ever gone
20 through in my life because it actually involves
21 creating a written work instruction for literally
22 everything that you do in your organization, and to
23 create forms that tie to those and to have a system so
24 that you can track the revisions and you can verify
25 that people are utilizing the correct revisions of the

1 documents and that you're getting the records back to
2 support both continue process improvement and also
3 client satisfaction.

4 And it took us probably close to 18
5 months utilizing a consultant just to get the bones in
6 place. And then you have to go at a minimum of one
7 year operating on that system and creating your
8 records and then you have to pay a independent third
9 party, you know, ISO certified company to come in and
10 audit to make sure that you do have the written work
11 instructions, that you're following them, that you are
12 creating the records. And then we paid them extra to
13 help us, you know, create suggestions to improve our
14 system.

15 And then at that point, we became ISO
16 certified. You have to then have that certification
17 for a number of years annually where they do a full
18 system audit and then after you've had that status for
19 a certain number of years, then they allow you to have
20 an abbreviated system audit annually and then a full
21 system audit every three years.

22 Q. QualityBuilt.com had these certifications in
23 place at the time that The Gates was being constructed
24 in 2006?

25 A. Correct.

MASTER SERVICES AND LICENSING AGREEMENT

BETWEEN

QUALITY BUILT.COM[®]

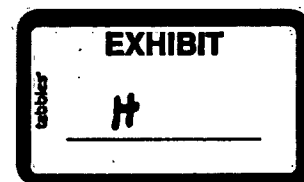
AND

COAST TO COAST ENGINEERING SERVICES, INC.,

D/B/A

CRITERIUM ENGINEERS[®]

(As amended January 14, 2006)



SECTION 1 - INTRODUCTION

- 1.0 This Master Services and Licensing Agreement ("Agreement") is entered into between QUALITY BUILT.COM®, a California corporation ("QB") and Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers® ("Criterium"). QB and Criterium may be referred to collectively as "Parties" or individually as "Party." QB was founded in 1993 and incorporated in 1999 as a risk management consulting firm with extensive experience in construction defect claims investigation, mitigation and avoidance. QB has developed many products, software and hardware systems to improve the durability, safety and comfort of real property and to track a builder's quality performance. Criterium was founded in 1957 and upgraded to a franchise organization in 1989. Criterium engages in construction consulting, site inspection, investigation, quality assurance, and other construction services. Criterium agrees to perform various Services to the construction and building community under the Quality Built® Services Program, as outlined in Exhibit 1.
- 1.1 Criterium will determine the method, details, and means of performing the Services, except that Criterium will perform such Services in concert with approved programs and protocols developed by QB and outlined in QB procedure and training protocols. Criterium agrees to faithfully execute these Services in an efficient, professional manner and strives to comply with all policies, procedures and system tasks associated with the consistent delivery of the QB system. These tasks include the use of QB software, hardware and systems as defined in Exhibit 1 (hereinafter, "Services"), and may be improved or modified at the discretion of QB.
- 1.2 Criterium may, at Criterium's own expense, use qualified employees, franchisees and employees of their franchisees (collectively, "Criterium") to perform the Services under this Agreement. Criterium agrees to ensure such entities and persons are qualified pursuant to the Inspector Levels reflected in Exhibit 2, and that such entities and persons acknowledge and agree in writing to abide by the terms of this Agreement and all agreements and provisions incorporated herein by reference. Criterium is not permitted to subcontract QB Services or systems to others without express written permission of QB.

SECTION 2 - DEFINITIONS

- 2.0 When used in this Agreement, the following terms shall have the meanings specified below:
- "Agreement" means this Master Services and Licensing Agreement.
 - "Corporate Accounts" shall have the meaning set forth in Exhibit 1 to this Agreement.
 - "Criterium" means Coast to Coast Engineering, Inc. d/b/a Criterium Engineers®.
 - "Effective Date" shall have the meaning set forth in Section 4.1 herein.

- "Joint Accounts" shall have the meaning set forth in Exhibit 1 to this Agreement.
- "Letters of Authorization" are the Exhibits to the contract, which describes the scope of work to be performed.
- "Licensed Property" shall have the meaning set forth in Section 9.1 of this Agreement.
- "Local Accounts" shall have the meaning set forth in Exhibit 1 to this Agreement.
- "Notice of Cancellation" shall have the meaning set forth in Section 5.2.6 herein.
- "Notice of Default" shall have the meaning set forth in Section 4.3 herein.
- "Notice of Non-Renewal" shall have the meaning set forth in Section 4.1 herein.
- "Notice of Termination" shall have the meaning set forth in Section 4.4 herein.
- "Opportunity to Cure" shall have the meaning set forth in Section 4.3 herein.
- "Pacific Property Consultants" is a sister company of Quality Built which is a nationally recognized group of forensic experts that specialize in construction defect litigation.
- "Parties" means QB and Criterium.
- "Party" means either QB or Criterium.
- "Percentage" Allocation shall have the meaning set forth in Exhibit 3 to this Agreement.
- "Pricing Guidelines" shall have the meaning set forth in Exhibit 8 to this Agreement.
- "Project Information Sheets" are the sheets that contain the information regarding the project.
- "Proprietary Information and Assignment of Inventions Agreement" shall have the meaning set forth in Exhibit 4 to this Agreement.
- "QB" means QUALITY BUILT.COM[®], a California corporation.
- "Services" means the services Criterium agrees to provide pursuant to this Agreement to the construction and building community under the Quality Built® Services Program, as outlined in Exhibit 1 to this Agreement, utilizing QB's software and hardware systems. It is expressly agreed that Services does not include services provided in the areas of construction consulting, site inspection, investigation and quality assurance using processes or methods not owned or

created by QB.

- “Scope of Work” is a document detailing the specific work to be done on the project. (See Section 6.2)
- “Term” shall have the meaning set forth in Section 4 of this Agreement.

SECTION 3 - COMPENSATION

- 3.1 In accordance with the standard terms of QB/builder Consultant Client Agreements and Letters of Authorization for all projects including, Corporate Accounts, Local Accounts, and Joint Accounts (as defined in Exhibit 1) the customer (e.g. “Builder”) will pay all fees pursuant to the 2006 Pricing Guidelines (Exhibit 8), and as reflected on the Letters of Authorization directly to QB. QB shall then forward the appropriate percentage to Criterium, pursuant to the Percentage Allocation (Exhibit 3), within ten (10) days of QB’s receipt of payment from the customer. QB shall perform contract administration and accounting management for all Consultant Client Agreements and Letters of Authorization, and shall use its best efforts to collect any overdue payments and to keep Criterium informed of same. Criterium has the right to request that QB stop work on any assigned projects on the basis of non-payment whenever a receivable is past 60 days. Such request to stop work must be submitted in writing to QB accounting office thirty (30) days in advance of anticipated work stoppage date. QB has the right to issue stop work notices in the event that Criterium fails to perform Services in compliance with QB standards. QB has the right to issue stop work notices to customers at their sole discretion. Criterium shall not renegotiate any of the terms as provided in Consultant Client Agreements and/or Letters of Authorization executed between QB and their customers, including, Corporate Accounts, Local Accounts, and Joint Accounts.
- 3.2 Other Services. In addition to QB Services as provided for above, the Parties hereby agree to cooperate and share revenue in accordance with the percentage splits identified within Exhibit 3. As new products and/or Services are created, they shall be incorporated into Exhibit 3 along with a negotiated revenue sharing percentage split.
- 3.3 Expenses of Criterium. Criterium shall be responsible for all expenses (including but not limited to payroll, travel costs, overtime, tools, and equipment) incurred in association with the performance of the Services under this Agreement.

SECTION 4 – TERM OF AGREEMENT

- 4.1 This Agreement will become effective on January 15, 2006 (“Effective Date”) and shall expire two (2) years from the Effective Date (herein referred to as “Term”). The Term shall automatically renew for additional two (2) year terms upon the second anniversary date of the Effective Date and every other anniversary date thereafter unless non-renewed by either Party. A written Notice of Non-Renewal may be executed by either Party only within a time period of ninety (90) to one hundred twenty (120) days prior to the second

anniversary of the Effective Date, or every other anniversary date thereafter. Such Notice of Non-Renewal shall only be effective if it is postmarked delivered by registered or certified mail by the terminating Party to the other Party and signed by an authorized representative of the terminating Party.

- 4.2 After providing Criterium an Notice of Default and an Opportunity to Cure as set forth herein, QB may terminate this Agreement for: Criterium's failure to perform Services in compliance with QB standards, any material breach of this Agreement, negligence, failure to supply qualified inspectors, any conflicting or illegal act, failure to provide accurate accounting records, and violation of any provision of this Agreement. Likewise, Criterium may terminate this Agreement for: QB's failure to supply procedures to perform the work, any conflicting or illegal act, failure to provide accurate accounting records, and/or violation of any provision of this Agreement. However, all sections dealing with the protection of intellectual property and those dealing with non-competition between the Parties will survive this Agreement.
- 4.3 If Criterium fails to perform or violates any term of this Agreement, then QB may give written notice of default ("Notice of Default") which itemizes said default(s) to Criterium for which Criterium shall be given a fifteen (15) day period to cure such default(s) ("Opportunity to Cure"). Said notice and cure period shall only be given on the first "default" that occurs on each respective project. Where said notice and cure have been afforded on a project, and a default occurs again, QB can immediately terminate Criterium's services on the respective project.
- 4.4 Upon completion of the fifteen (15) day cure period, QB retains the right to conduct an in-person audit to ensure Criterium has cured said default. Criterium shall be liable for all reasonable expenses relating to such audit which results from said Notice, including, but not limited to, travel (airfare), hotel, food, (actual costs) and a Five hundred dollars and no/100 (\$500.00) per day fee for data collection services, if and only if QB determines that Criterium failed to perform said Services in compliance with QB standards. If Criterium fails to cure the default within fifteen (15) days of the original Notice of Default, QB may terminate this Agreement by a second written notice ("Notice of Termination") to Criterium. If a Notice of Termination is sent to Criterium, this Agreement shall terminate five (5) days from Criterium's receipt of such notice. At such time, the completion of the project shall be determined based on services delivered and a pro-rata charge to Criterium shall be applied for incomplete work that had been billed and paid.
- 4.5 This Agreement terminates automatically on the occurrence of any of the following events: (a) bankruptcy or insolvency of either Party; (b) sale or transfer of the assets of either Party.

- 4.6 Upon notice of termination, Criterium shall immediately cease QB operations and within ten (10) business days shall carefully package and return all QB equipment, software, business products, marketing aids, manuals, and any other supplied products to QB offices by insured delivery. Criterium shall not make any copies and will destroy all copies of above referenced items in their possession.

SECTION 5 - INSURANCE

- 5.1 Criterium enters into this Agreement as, and shall continue to be, a service provider to QB. Under no circumstances shall Criterium look to QB as a partner or joint venturer, co-owner or in any other capacity, which would create a new entity between the Parties. It is specifically the intent of the Parties not to create a partnership or joint venture. The Parties do not intend to create a relationship which would impose fiduciary duties between the Parties. In addition, Criterium will not look to QB as a co-employer of any employee of Criterium or its franchisees. Employees of Criterium and its franchisees shall not be entitled to any benefits accorded to QB's employees, including, but not limited to, worker's compensation, disability insurance, retirement, profit sharing, vacation or sick pay. The Parties also intend that QB is not to be construed as a franchisor or co-franchisor of Criterium or any of its franchisees.

- 5.2 Criterium shall be responsible for providing, at Criterium's expense, and in Criterium's name, its own commercial general liability coverage, errors and omissions insurance coverage, disability insurance coverage, worker's compensation insurance coverage, automobile insurance coverage, health or other insurance, as necessary, as well as licenses and permits usual or necessary according to industry custom and practice in performing the Services called for in Exhibit 1. In addition, Criterium agrees to comply with all insurance requirements that customers place on QB to the extent they exceed or differ from the requirements below. Insurance requirements are as follows:

- 5.2.1 Commercial Auto Coverage. Automobile Liability coverage of not less than One million dollars and no/100 (\$1,000,000.00) combined single limit, each accident, covering all owned, hired and non-owned autos.

5.2.2 Commercial General Liability

The limits of liability shall not be less than:

Each Occurrence Limit	\$2,000,000.00
Personal Advertising Injury Limit	\$1,000,000.00
Products/Completed Operations Aggregate Limit	\$1,000,000.00
General Aggregate Limit	\$5,000,000.00

(other than Products/Completed Operations)

The Policy must include:

1. Premises and Operations coverage with no explosions, collapse, or underground damage exclusion (XCU)
2. Products and Completed Operations coverage.
3. Standard ISO CG0001 0196 Contractual Liability coverage, or its equivalent, and a Separation of Insureds clause.
4. Broad Form Property Damage coverage.
5. Any insurance requirements mandated by the builder must be met or Criterium will forfeit job.
6. QB shall be named as an additional insured.

5.2.3 Errors & Omissions- Criterium further agrees to maintain an Errors and Omissions policy of insurance in the minimum amount of Two million dollars and no/100 (\$2,000,000.00) per claim, or limits carried, whichever is higher, with a deductible or self-insured retention amount not greater than Fifty thousand dollars and no/100 (\$50,000.00), with supplementary coverage of Contractual Liability to cover any negligent acts committed by Criterium or Criterium's employees, franchisees, or other agents during the performance of the Services herein. Alternatively, on a project by project basis, Criterium shall have the right to be added as an additional insured on QB's policy by making payment to QB of 1.5% of any project contract amount.

5.2.4 Criterium agrees to provide proof of insurance to QB upon request. QB agrees to provide Criterium proof of insurance upon request.

5.2.5 Workers' Compensation

Coverage A. Statutory Benefits

Coverage B. Employers' Liability as follows:

Bodily Injury by accident \$1,000,000.00 each accident

Bodily Injury by disease \$1,000,000.00 policy limit

Bodily Injury by disease \$1,000,000.00 each employee

Coverage must include a waiver of subrogation endorsement in favor of, and naming Builder, including its subsidiaries, partners, partnerships, affiliated companies, successors and assigns.

Notice that most builders require a waiver of subrogation.

5.2.6 Other Requirements

All policies must afford an unqualified thirty (30) days Notice of Cancellation to the additional insured(s) in the event of cancellation or non-renewal, and ten (10) days Notice of Cancellation for non-payment of premium.

All policies must be written by insurance companies whose rating in the most recent Best's Rating Guide, is not less than A(-): VII. All coverage forms must be acceptable to Builder. Criterium agrees to provide a fully certified copy of any policy maintained by Criterium to QB upon QB's request.

Certificates of Insurance with the required endorsements evidencing the required coverages must be delivered to QB and/or Builder prior to commencement of any work under this Agreement.

If Criterium fails to secure and maintain the required insurance, QB shall have the right (without any obligation to do so, however) to secure same in the name and for the account of Criterium in which event Criterium shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. QB shall notify Criterium if QB exercises this right.

Criterium shall pay, when and as due, any and all taxes incurred as a result of compensation paid by QB to Criterium, including estimated taxes, and shall provide QB with proof of payment on demand. Criterium agrees to fully defend, indemnify, and hold harmless QB for any claims, losses, costs, fees, liabilities, damages or injuries suffered by QB arising out of Criterium's breach of this section.

SECTION 6 - CRITERIUM'S REPRESENTATIONS

- 6.1 Criterium represents that it has the qualifications, licensing, certifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of QB. Performance of the Services in a professional manner includes meeting the requirements of the prime contract under which QB is obligated to perform Services for the customer, and failure to do so by Criterium shall constitute a material breach of this Agreement.
- 6.2 QB is obligated to provide notification of project set-up for each project assigned to Criterium, in addition to copies of corresponding Project Information Sheets and Scopes of Work and any other information relevant to the performance of the assignment, within five (5) days of QB's receipt of the pertinent signed agreement(s) for such assigned project.
- 6.3 Within fifteen (15) days from QB's notification of assigned project to Criterium, Criterium shall be responsible for ensuring the project parameters as reflected on their PDA, including, but not limited to, unit count, unit type, or other relevant information,

are accurate and in accordance with the actual project conditions. Should Criterium not inform QB within twenty (20) days from receipt of project set up of such discrepancies, Criterium shall be liable for any ensuing data transfers, or database adjustments. Criterium shall be solely responsible for on-site supervision of the professional performance of the Services, and shall receive no on-site assistance, direction, or control from QB. Criterium shall have sole discretion and control of its services and the manner in which such services are performed and will assure such Services are consistent with the QB system, policies, and manuals mentioned herein.

- 6.4 In addition to mandatory attendance at QB training sessions pursuant to Section 10, Criterium shall be responsible for maintaining a high level of ongoing training and continuing education consistent with the QB Inspector Levels as reflected in Exhibit 2.

SECTION 7 – INDEMNITY

- 7.1 Criterium shall and does hereby indemnify, defend and hold harmless QB, Pacific Property Consultants, its affiliates and subsidiaries, and their officers, directors, owners, and employees from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that QB or other named indemnities incur or suffer and that result from, or are in any way related to any services performed by Criterium, their employees, agents, franchisees, or authorized subcontractors.
- 7.2 It is a requirement of QB that all contracts with builders or other customers contain mutual indemnity provisions subject to the principles of comparative fault.
- 7.3 QB shall indemnify Criterium for any actions or claims which are determined to have arisen solely from the products, services, and/or software systems and data provided by QB or its employees.
- 7.4 Criterium shall immediately notify QB in the event of discovery of any of the following:
- 7.4.1 Written complaint from client or customer that is not resolved within ten (10) days;
- 7.4.2 Any lawsuit, lien, foreclosure of business assets or similar actions against Criterium or its principals;
- 7.5 Any I.R.S. or government audits.

SECTION 8 - OWNERSHIP OF INTELLECTUAL PROPERTY

- 8.1 Concurrent with executing this Agreement, Criterium has signed and agrees to be bound by the Proprietary Information and Assignment of Inventions Agreement, which is attached hereto as Exhibit 4 and incorporated herein by reference as though fully set forth.

SECTION 9 - USE AND LICENSING OF INTELLECTUAL PROPERTY

- 9.1 At all times and solely in performance of Criterium's Services performed pursuant to this Agreement, Criterium shall use the name "QUALITY BUILT®" and the other trademarks, service marks, trade names, designs, insignias, logos, software, equipment, inventions, methods, processes, inventions, and trade secrets ("Licensed Property") as set forth in Exhibit 5 attached hereto, and as supplemented from time to time by QB in an approved manner. Criterium shall present themselves as a licensed provider of QB Services, including, but not limited to, displaying the QB logo visibly on all job sites. As part of this process, the Parties agree to use their best efforts to ensure that Criterium is presented as an independently owned and operated QB licensee. Under no circumstances shall Criterium be required to present itself in a way that would state or imply that Criterium is a partner, joint venturer, co-owner or in any other capacity, which would create a new entity between the Parties. It is specifically the intent of the Parties not to create a partnership or joint venture. The Parties do not intend to create a relationship which would impose fiduciary duties between the Parties. QB hereby grants to Criterium a non-exclusive license to use the Licensed Property only during the Term of this Agreement and solely in performance of Criterium's Services as set forth in Exhibit 1. This permission to use the Licensed Property includes access to QB's proprietary information, as necessary to carry out the Services performed by Criterium. QB may revoke this license at any time, with good cause, upon written notice to Criterium. When such a notice is delivered to Criterium, the license in this paragraph is revoked as of the date and time of delivery. Upon the termination of this agreement or the revocation of the foregoing license, Criterium agrees to return, all advertising, promotion and marketing materials, any document printed with QB trademarks and symbols and any other printed materials displaying the QB name or logo, and all other Licensed Property in addition to all other property within ten (10) days to QB.

Normal identity material shall include the following:

- Clothing dual QB/Criterium logo permitted.
- Hard hats only QB logo, or plain white.
- Business cards dual QB/ Criterium logo permitted.
- Vehicle signage only QB logo, or neutral.
- Stationery QB primary, Criterium secondary.
- Office signage QB primary, Criterium secondary.
- Brochures dual QB/ Criterium logo permitted.

Criterium will present the design for the logos and assure compliance by all CE employees/franchisees within 60 days of the Effective Date of this Agreement.

- 9.2 Criterium's use of the Licensed Property should clearly indicate that such Licensed Property is the registered marks, patents, or property of QB and that the use of the Licensed Property is pursuant to a license. Criterium shall not do, or cause to be done, or omit doing, any act that would in any way impair, reduce, or contest QB's right, title, and interest in the Licensed Property. Criterium's use of the Licensed Property will not create any right, title, or interest in or to the use of the Licensed Property other than as set forth in this Agreement, and all such uses and goodwill associated with the Licensed Property will inure to the benefit of QB. Criterium is expressly prohibited from incorporating any entity, which includes the "Quality Built" name style. Criterium, and each franchisee of Criterium that is licensed to provide QB Services, shall incorporate the approved QB logo into their marketing materials created and/or distributed upon Effective Date.
- 9.3 Criterium acknowledges and agrees that QB owns all rights, title and interest in and to the Licensed Property, whether currently existing or later developed by QB after the Effective Date of this Agreement. Except as expressly provided in this Agreement, Criterium shall not sell, transfer, publish, disclose, display, license, sublicense or otherwise make available to others any part of such Licensed Property or copies thereof. All proprietary rights of any nature in such Licensed Property, including, without limitation, all enhancements, modifications, upgrades and improvements thereto, belong to, and shall be and shall remain solely with QB. Criterium agrees to execute such further documents, and perform such other acts, as QB may deem necessary or appropriate to evidence or perfect the rights of QB in the Licensed Property. In addition, with respect to any jointly created works based on or derived from Licensed Property, or confidential information of QB, QB shall be the exclusive and sole proprietary owner of all rights, title and interest in and to each and every innovation, invention, discovery, improvement, modification, device, design, apparatus, practice, process, method, product, service or any other proprietary rights, and all technology rights related thereto, arising out of or relating to this Agreement or the transactions contemplated hereby.
- 9.4 Criterium's use of the Licensed Property shall be in accordance with applicable intellectual property law and with QB's policies on advertising and intellectual property usage as established and amended by QB, in its sole discretion, from time to time. Criterium shall submit all marketing, promotion and advertising materials to QB in advance of publication for approval at least 20 days in advance. If QB does not notify Criterium of its non-approval within 10 days of receipt, Criterium shall be free to utilize such advertising materials.
- 9.5 Criterium shall be prohibited from marketing, promoting or advertising any QB registered marks without appropriate copyright, trademark and/or other required registration symbols.
- 9.6 Public Figures- Criterium shall be prohibited from engaging the use of any public figure in its advertising or promotions unless specifically agreed to by QB.
- 9.7 Upon termination of this Agreement, Criterium shall immediately file the necessary documents to rescind the QB fictitious name statement in all areas where Criterium has filed or received a fictitious name statement. Criterium agree to disclose all said fictitious

name statements within thirty (30) days of executing this Agreement.

SECTION 10 – COMPETITION

10.1 Except as noted below, QB shall be free to aggressively market Corporate Accounts for expansion of the QB business. The Parties agree that neither owes the other a fiduciary duty of loyalty regarding competing with the other. The only restrictions on competition between the Parties are as set forth in this Agreement.

10.2 Non-Exclusivity of Services. During the Term of this Agreement, QB shall initially assign Corporate Account projects (as outlined in Exhibit 1) to Criterium or other licensed independent consultants or QB employee. Assignments will be based upon various factors such as qualifications of specific field service personnel, availability of trained manpower, performance on existing accounts, location, and preference of client or other criteria. For projects assigned to Criterium, Criterium shall perform such Services in compliance with this Agreement throughout the United States. If after 15 days of assignment of a Corporate, Joint, or Local Account project, Criterium is unable to commence Services pursuant to either the terms of the project's Consultant Client Agreement and Letter of Authorization and/or performance metrics, does not cure a default within the fifteen (15) day cure period allowed under a Notice of Default, or renders repetitive defaults (collectively "Breach"), QB, at its sole discretion, retains the right to choose to perform the work itself or contract with another entity or person to perform the work. In addition, if the customer objects to the work being assigned to Criterium, or if during the work performed by Criterium the customer objects to Criterium continuing to perform work, QB may intercede and perform the work itself, or contract with another entity or person to perform the work. If Criterium's performance should result in a breach on any project agreement, QB hereby reserves the right, at their sole discretion, to reassign such project, and/or assign any future projects or accounts. Criterium shall freely compete with QB and non-Criterium QB providers for establishment of Local Accounts, as set forth in this Agreement, and subject to the Percentage Allocation in Exhibit 3.

In addition, Quality Built reserves the right to assign the following types of work to any licensed independent consultant or QB employee.

- a. Soils inspections and evaluations, including but not limited to grading, compacting, slope, drainage, stability, site development work and related types of work related to soils.
 - b. Litigation support services, including but not limited to work as an expert witness, work evaluating a legal dispute where retained by an attorney or law firm.
- 10.3 No solicitation of employees. During the Term of this Agreement and for a period of one year after the termination of this Agreement for any reason, each Party agrees that it will not directly or indirectly, either alone or in concert with others, solicit or entice any employee, franchisee or consultant of one Party to this Agreement to work for the other

Party, its consultants or franchisees, unless approved in writing by the Parties in advance.

- 10.4 No solicitation of customers or carriers. During the Term of this Agreement and for a period of two (2) years after the termination of this Agreement for any reason, Criterium agrees it will not directly or indirectly, either alone or in concert with others, solicit, entice, call on, or divert any customer or sponsoring insurance carrier of QB in order to provide any competing Services to such customer or carrier.
- 10.5 Trade secrets. The Parties agree that each entity owns trade secrets that are of great economic value to its business. These trade secrets include customer lists, customer specifications, business model information, software, forms, operating procedures, marketing strategies and methods, lists of sponsoring insurance carriers and their points of contact, identity of key personnel with insurance carriers, information regarding insurance carrier's plans for incentives being offered to insureds for obtaining inspections during new construction, and other information, techniques, and methods. To the extent any such trade secrets are disclosed from one Party to the other, each Party agrees to hold such trade secrets in confidence, and not to disclose any such trade secrets to any third Party. Each Party agrees to take all necessary steps to protect the confidentiality of such trade secrets, including requiring its own employees, franchisees, agents and authorized subcontractors who work on projects to sign Agreements in writing whereby they agree to protect the confidentiality of such trade secrets. Each Party agrees to only disclose such trade secrets to employees, franchisees, agents and authorized subcontractors with a need to know such trade secrets in order to accomplish the work.
- 10.6 No competition during the Term of the contract. Criterium agrees that during the Term of this Agreement, it will not provide Services to QB's clients other than those assigned by QB or secured by Criterium as a joint or local account, which Criterium would then notify QB of by submitting a Lead Notification Form.

SECTION 11 – CRITERIUM'S TRAINING AND PURCHASE OF EQUIPMENT

- 11.1 Criterium agrees to ensure all its employees, agents, franchisees, and authorized subcontractors it uses to perform work pursuant to this Agreement will enroll and pass all required training and certification courses that are considered mandatory by QB prior to engaging in any work or marketing under this contract. Training for all Criterium Field Coordinators and Criterium Field Representatives shall be provided by a QB trainer. Training shall take place in Aurora, Colorado at the QB Training Center or a mutually agreed upon location. Criterium and QB shall cooperate to improve existing training and create new training tools to achieve high proficiency levels for all field inspectors and trainers. QB agrees to make its training and certification services available to Criterium Field Coordinators and Criterium Field Representatives on at least a monthly basis.
- 11.2 Criterium will bear any travel costs for personnel in addition to the QB training fee. Criterium will pay QB Two thousand dollars and no/100 (\$2,000.00) for each such person who attends training.
- 11.3 Criterium agrees it shall be considered a material breach of this Agreement to use any

person to perform Services under this contract that is not trained and certified by QB. Current field service providers trained by a senior Criterium trainer will be grandfathered into the program. A list of the grandfathered field service providers is attached to this Agreement as Exhibit 9.

- 11.4 Each year, Criterium Field Coordinators and Criterium Field Representatives shall participate in the QB annual training programs, or any other conference or programs deemed mandatory by QB, in its sole discretion. Such mandatory training programs shall not exceed thirty-six (36) hours of contact time in any given year. Criterium agrees to bear the cost of attending all continuing education, including travel costs, payroll, registration fees, and fees for materials, if any. QB agrees that said registration fees, excluding travel expenses, shall not exceed \$1,500 per Criterium Field Coordinator or Criterium Field Representative, on an annual basis. At Quality Built's discretion these annual training sessions may be combined with Criterium's customary training or educational programs or may be in a centralized location and include other licensed non-Criterium independent consultants. QB may reduce the contact time as technological advancements are made in online training, certification and onsite performance monitoring.
- 11.5 Before performing any services under this Agreement, Criterium agrees to lease from QB the required hardware, software and equipment and software/hardware support services as identified in the Equipment List (Exhibit 6), which is attached hereto and which is incorporated herein by reference as though fully set forth. Criterium agrees that it will pay Five hundred dollars and no/100 (\$500.00) per month as a leasing fee for hardware and software for each individual who is equipped with a QB computer and software. To the extent such equipment must be shipped, Criterium agrees to pay reasonable shipping and handling fees. In addition, to the extent Criterium desires to use equipment, uniforms, safety gear, or to use items with a QB logo, Criterium agrees that it will bear the cost of such items. QB agrees to have sufficient stock of replacement equipment, such that any inoperable equipment may be replaced within twenty-four (24) hours of receipt of damaged equipment. The monthly lease payments include repair of inoperable equipment but do not include physical damage, intentional abuse, theft, tampering or improper maintenance. QB reserves the right to reduce or withhold payment to Criterium and/or its franchisees for services rendered as compensation for the replacement of damaged or lost equipment or delinquent lease payments.
- 11.6 As QB systems evolve over time, the Parties acknowledge and agree that it may be necessary to exchange, modify or replace obsolete software and hardware to better serve clients. Criterium shall fully cooperate with QB in any such modifications or improvements and to exchange new equipment, software, etc., as fielded by QB. Criterium will pay the cost of replacing obsolete equipment, except for equipment covered under the Five hundred dollars and no/100 (\$500.00) per month lease as noted in Section 10.5 above. QB shall ensure the hardware and equipment provided pursuant to the lease agreement set forth in Section 10.5 above, is not older than two and a half (2 1/2) years. Any such equipment shall be replaced by QB free of charge on or before the end of the second year. In the event that such equipment is to be used beyond the two and one half years, then the above referenced license fee shall be reduced to \$400 per

month. In no event shall QB be permitted to require such equipment to be that is older than four (4) years. When Criterium replaces the used equipment for a new machine, the referenced licensed fee shall return to the proscribed \$500 per month. In addition, if such equipment is lost, destroyed, misplaced, or damaged, Criterium agrees to bear the cost of replacement or repair. If software, data, or other trade secrets or confidential information of QB is lost, copied in an unauthorized manner, or otherwise unaccounted for, Criterium agrees to take all necessary steps up to and including legal action to protect the confidentiality of such items. In addition, Criterium agrees to indemnify QB for any and all losses and damages that occur where the negligence or intentional conduct of a Criterium employee, agent, franchisee, or authorized subcontractor was a substantial factor in the loss of QB trade secrets or intellectual property.

- 11.7 QB may conduct quality assurance audits and investigations of Criterium and its employees, agents, franchisees and authorized subcontractors, and all others performing Services in the field, within the sole discretion of QB, to ensure compliance with QB policies and manuals as posted on its secure internet site and as may be amended from time to time. Criterium agrees to fully cooperate with QB and shall correct any deficiencies noted, and within ten (10) days Criterium shall provide to QB in writing (signed by a certified senior trainer) either confirmation that each correction was made, or a detailed action plan to correct such deficiencies within an additional ten (10) days. Failure on the part of Criterium to correct repeated deficiencies noted within twenty (20) days may result in QB's decertification and loss of license for Criterium, or its employee, agent, franchisee, or authorized subcontractor from this program and/or cancellation of this Agreement by QB. Reoccurrence of the same deficiency at a later date or as a pattern in a service area may result in the immediate decertification of Criterium. In the event that Criterium, or any employee, agent, franchisee, or authorized subcontractor is decertified due to non-compliance of the program, all equipment, software, copies of information, data, etc. shall be immediately returned to QB. There is no refund of training or software monies to Criterium or its employee, agent, franchisee, or authorized subcontractor in the event of such termination. QB may, in its sole discretion, require the person or entity to complete additional training and/or certification at Criterium's sole expense before QB agrees to allow the person or entity to resume work pursuant to this contract. In addition, if Criterium or its employee, agent, franchisee, or authorized subcontractor fails an audit, QB may, in its sole discretion decertify the person or entity from working on QB projects. If decertification occurs and QB must intercede and perform the work itself or hire another provider to perform the work, Criterium agrees to pay any and all reasonable costs including but not limited to travel costs and related expenses associated with servicing the project. Criterium shall be compensated for Services rendered on any project(s) based on a pro-rata share of completed acceptable Services.
- 11.8 Acknowledgement by employees, agents, franchisees, or authorized subcontractors. Criterium shall, prior to assigning QB work to any employee, agent, franchisee or authorized subcontractor, provide QB with a fully executed Acknowledgement Form (Exhibit 7) every year. In addition, Criterium shall provide yearly curriculum vitae, résumé, or other acceptable qualification statement(s) for each user on an annual basis. These qualification statements will be entered into a database and used to determine

eligibility to receive assignments of Corporate Accounts.

SECTION 12 – QB SUPPORT PROVIDED TO CRITERIUM

12.1 QB shall provide and maintain support services for Criterium as follows:

- (a) Technical: Criterium shall have access to toll-free phone technical support service during QB business hours which shall be posted on its secure internet site and as may be amended from time to time for the technical support of Services for Criterium. Such services shall include technical and code-related support, manufacturer's information, and related risk support explanations, as pertaining to the scope of work for projects assigned to Criterium.
- (b) Marketing: QB shall provide to Criterium at actual cost all available marketing materials as needed to promote the QB Services for Local Accounts.
- (c) Computer software/hardware: Unlimited technical support during published business hours for hardware and software for the first 90 days for new franchisees commencing Services, or 30 days support during and after any major software release that affects field computer usage. Online support or published help-desk shall be included at no cost for the duration of this Agreement. Additional assistance shall be charged to Criterium at the rate of One hundred twenty-five dollars and no/100 (\$125.00) per hour for services beyond those stated above.

SECTION 13 – GENERAL PROVISIONS

13.1 The Parties agree that California law applies to this Agreement and to the work performed by Criterium, its employees, agents, authorized subcontractors, or franchisees without regard to the principles of conflict of law.

13.2 The Parties agree that the venue for any dispute arising between the Parties regarding this Agreement or work performed under this Agreement shall be binding arbitration conducted by the American Arbitration Association (AAA) in San Diego, California in accordance with the Commercial Arbitration rules of the American Arbitration Association. All disputes between the Parties hereto shall be determined solely and exclusively by arbitration in accordance with the Commercial Rules then in effect of the American Arbitration Association, or any successors hereto, in San Diego County, California, unless the Parties otherwise agree in writing. The Parties shall jointly select an arbitrator. In the event the Parties fail to agree upon an arbitrator within ten (10) days, then each Party shall select a Party arbitrator within seven (7) days and such arbitrators shall then select a third arbitrator to serve as the sole arbitrator, provided that if either Party through their Party arbitrator fails to select an arbitrator within seven (7) days, or the Parties through their Party arbitrator fail to agree upon a sole arbitrator within seven (7) days of appointment, such arbitrator shall be selected by the AAA upon application of either Party. Judgment upon the award of the agreed upon arbitrator or the arbitrator selected by the AAA, as the case may be, shall be binding and shall be entered into by a

court of competent jurisdiction. EACH PARTY HEREBY WAIVES THE RIGHT TO SUBMIT ANY DISPUTE, CLAIM OR CAUSE OF ACTION THAT IT MAY HAVE AGAINST ANY OTHER OF THE PARTIES HERETO TO A PUBLIC TRIBUNAL FOR JURY OR NON-JURY TRIAL. The sole exception to this is that QB may apply to a court of competent jurisdiction for injunctive relief and damages in the event Criterium or any of its employees, agents, franchisees, or authorized subcontractors misappropriate trade secrets or infringe upon other intellectual property of QB. The prevailing Party in any arbitration is entitled to receive reasonable attorney's fees and costs from the other Party. *

- 13.3 This Agreement may be supplemented, amended, or modified only by the mutual Agreement of the Parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by both QB and Criterium.
- 13.4 This Agreement and the exhibits referred to in this Agreement constitute the final, complete, and exclusive statement of the terms of the Agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or Agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.
- 13.5 Criterium may not assign any of its rights or duties under this Agreement without the prior written consent of QB. Such consent shall not be unreasonably withheld, provided that QB is satisfied that any assignment will be able to meet all minimum performance metrics, all financial requirements and has successfully completed required training and other conditions imposed by QB, which shall be posted on QB's secure internet site. QB is free to assign this Agreement without the consent of Criterium. This Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors and permitted assigns.
- 13.6 If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid, void, illegal or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

DATED: 1-16-06

QUALITY BUILT.COM®

By: Stanley R. Luhr

Stanley R. Luhr, CEO

DATED: 1-16-06

QUALITY BUILT.COM®

By: Elizabeth R. Michaelle

Elizabeth R. Michaelle, President

DATED: _____

Coast to Coast Engineering Services, Inc. d/b/a
Criterion Engineers®

By: _____

H. Alan Mooney, President

DATED: _____

Coast to Coast Engineering Services, Inc. d/b/a
Criterion Engineers®

By: _____

Peter Hollander

DATED: _____

QUALITY BUILT.COM®

By: _____

Stanley R. Luhr, CEO

DATED: _____

QUALITY BUILT.COM®

By: _____

Elizabeth R. Michaelis, President

DATED: 1-16-06

Coast to Coast Engineering Services, Inc. d/b/a Criterium
Engineers®

By: _____

H. Alan Mooney, President

DATED: 1-16-06

Coast to Coast Engineering Services, Inc. d/b/a Criterium
Engineers®

By: _____

Peter Hollander

LIST OF EXHIBITS

Exhibit 1 – QUALITY BUILT.COM® Services Program

Exhibit 2 – QUALITY BUILT.COM® Inspector Levels

Exhibit 3 – Percentage Allocation

Exhibit 4 – Proprietary Information and Assignment of Inventions Agreement

Exhibit 5 – Licensed Trademarks and Patents

Exhibit 6 – Equipment List

Exhibit 7 – Acknowledgement Form

Exhibit 8 – 2006 Pricing Guidelines

Exhibit 9 – Grandfathered Field Service Providers

EXHIBIT 1

QUALITY BUILT.COM® "SERVICES" PROGRAM

DEFINITIONS

The following definitions shall apply:

- SFD** - Single-family Dwelling
- MFD** - Multi-family Dwelling
- APT** - Apartment

Corporate Account - Builder or customer who provided QUALITY BUILT.COM® ("QB") with contact information at trade show or seminar or was referred to QB by an insurance carrier or has otherwise become known to QB and is contained in QB database of leads/prospects.

Local Account - Builder or customer unknown to QB and not contained in QB database of leads/prospects (confirmed upon receipt of a Lead Notification Form) and is not a part of a mandated or incentivised insurance program.

Joint Account - A builder or customer who qualifies as a Corporate Account and the QB sales manager requests assistance from Criterium Engineers® ("Criterium") in securing this account or Criterium requests the QB sales manager assigns a sales account manager to assist in securing the account.

Field Representative - Any field personnel that collects data, provides training to builders, and/or acts as the liaison between the superintendent and QB.

Field Coordinator - Field Coordinators are responsible for overseeing the workload for each Field Representative, verifying that they meet all established performance metrics and ensuring that all deliverables are timely and of the highest quality. Field Coordinators are responsible for conducting monthly walk behinds for each Field Representative and offering one on one training based upon those results. Field Coordinators are responsible for training all new Field Representatives and all existing Field Representatives on new products and services or methodologies. Field Coordinators may be required to conduct additional walk behinds and/or training on their assigned Field Representatives, if deemed necessary by Quality Built.

Unit- Any SFD such as a detached home, attached condominium or apartment that is built to house one family. For mid-rise/high-rise buildings a Unit can also refer to data collection areas outside of a habitable space.

"SERVICES" OUTLINED

- **QB Site Observations - All Levels**

Consists of a pre-job conference with project superintendent, delivery and explanation of field binder and other relevant information including training on the use of QB CLOSURE LINK™/QB BUILDER LINK™, FRAMER ID™, or other special products/services, and conducting physical construction inspection of the project for quality assurance and improvement. All data collection/site visits require the use of QB proprietary software and hardware to collect important data of quality measurements, photographs and other pertinent information as needed. All project model Units and at least 10% of project production Units must be observed by a licensed engineer. The specific obligations are identified in the Field Representative's Operation Manual and/or training materials, performance metric guidelines and other available sources

A. Level 1

Data to be collected based upon a per Unit average. Contact time will average between 1 and 1.5 hours per Unit. Contact time is defined as data collection, time checking in and out with superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. A majority of constructed Units are evaluated in some fashion with a goal of providing a minimum average of 60 to 90 checkpoints per Unit for all Units constructed. Not all Units receive data collection. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet.

B. Level 2

Data to be collected based upon a per Unit average. Contact time will average between 2 and 2.5 hours per Unit. Contact time is defined as data collection, time checking in and out with superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Field Representative will collect an average of 120 checkpoints per Unit. A majority of constructed homes are evaluated in some fashion with a goal of providing a minimum average of 120 to 180 checkpoints per home for all homes constructed. Not all Units receive data collection. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet.

C. Level 3

Data to be collected based upon a per Unit minimum. Contact time will average between 2.5 and 3 hours per Unit. Contact time is defined as data collection, time checking in and out with superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Field Representative will collect a

minimum of 180 checkpoints per Unit. Not all systems are included. Each level of quality assurance service includes access to our Quality Built Information Network (QBIN) via the Internet.

D. Level 4

Data to be collected based upon a per Unit minimum. Contact time will average between 4 and 4.5 hours per Unit. Contact time is defined as data collection, time checking in and out with Superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Field Representative will collect a minimum of 240 checkpoints per Unit. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet.

E. Level 5

Data to be collected based upon a per Unit minimum. Contact time will average between 6 and 8 hours per Unit. Contact time is defined as data collection, time checking in and out with Superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Field Representative will collect a minimum of 450 checkpoints per Unit. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet.

F. Level 6

Data to be collected based upon a per Unit minimum. Contact time will average between 4 and 4.5 hours per Unit. Contact time is defined as data collection, time checking in and out with Superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Field Representative will collect a minimum of 240 checkpoints per Unit. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet. In addition, builder will receive Quality Built Builder Link for use by builder's internal quality assurance department.

OPTIONAL SERVICES

The following programs/services may be considered optional, and may be contracted to Criterium upon sufficient evidence of training, certification and performance. The Parties shall agree to a standard pricing formula upon execution of any optional services:

- **TECHNICAL PLAN REVIEW – All Levels**

A proprietary method of using QB's Peer Review software and guidelines to identify high risks in the construction documentation, including faulty or misleading construction details or specifications, omissions or errors which have proven to lead to poor quality or defective construction practices. A written report is generated in compliance with QB protocols, and delivered to the architect for review. If warranted in the contract, a personal meeting and evaluation is conducted to review all recommendations. TECHNICAL PLAN REVIEW must be conducted under the direct supervision of a licensed architect or engineer experienced in evaluating construction specifications and drawings.

Criterium must either provide TECHNICAL PLAN REVIEW Level 1 for no additional fee (when bundled into the per Unit fee) or reimburse QB for expenses to provide. All higher level plan reviews may be sold by Criterium for a portion of the fee even if they are not licensed to provide.

A. Level 1

Details are studied using a 50 to 60-point "standard checklist" of the highest risk items based upon our litigation and forensic experience. When complete, a written report is generated that documents findings and recommendations with those items that apply to the project only.

B. Level 2

This comprehensive level of service includes all aspects of the plans and details. Look for ambiguous details, incomplete details and details that have historically failed and create a "customized checklist" for the project. When complete, a written report is generated that documents findings and recommendations with those items that apply to the project only. The written report includes red-lined details and a second review to verify closure to all open items.

C. Level 3

This comprehensive level of service includes all aspects of the plans and details. Look for ambiguous details, incomplete details and details that have historically failed and create a "customized checklist" for the project. The written report includes red-lined details and a second review to verify closure to all open items, with additional time spent on evaluating the completeness of Area Separation Walls, Occupancy Separation Assemblies, and any subterranean waterproofing systems.

D. Level 4

This plan review includes all of the Level 3 services with additional time spent on exterior cladding (integration of exterior cladding with balconies, decks and

fenestrations), parapet walls, more complicated roofing and HVAC systems, and elevated pools/spas. A "customized checklist" should be created for the project.

E. Level 5

This Premier Comprehensive Plan Review consists of multiple stages and typically takes between 6 to 8 weeks total to complete. Analysis of all aspects of the project plans and details is required. The review will include a complete evaluation of the building envelope to prevent water penetration. All elevations will be carefully analyzed with additional time spent on evaluating completeness for balconies, decks and wall transitions, roof assemblies, trellises or any décor penetrating the building; podium decks, area separation walls, planters on top of podium decks, subterranean waterproofing systems, EIFS, exterior finish transitions, interior details, fire rated wall details, and more.

Approximately 80-200 man-hours are to be spent on the review. The process is broken up into three stages; first conduct a preliminary review that will last approximately two days and require that the construction of plans are at least 30% complete. Then, identify the main details that should be provided and develop a list of details and recommendations for the client's design team. QB Architectural Services will be available for phone consultation at no additional charge (budgeted 2 hours).

The second stage in the process lasts 40-60 man-hours. Plans are to be at least 70% complete. This stage encompasses EIFS System (if it applies), podium decks waterproofing, foundations waterproofing, and building envelope.

The third stage of the process is a re-submittal of the plans and a final detail consultation.

F. Commercial Building (Non-residential)

This comprehensive level of service includes the following limited scope:

- Review of Building Envelope
- Elevations
- All Architectural Details (Interior / Exterior)
- Roof Assemblies
- Area Separation Walls

Look for ambiguous details, incomplete details and details that have historically failed and create a "customized checklist" for the project. When complete, create a written report that documents the findings and recommendations with those items that apply to the project only. The written report includes red lined-details and a second review to verify closure to all open items.

- **Project Structural Review**

Similar to above, except a QB software program has not yet been developed to serve this need. The Structural Peer Review must be conducted under the direct supervision of a licensed architect or engineer experienced in building engineering.

- **FRAMER I.D.[™] - All Levels**

A proprietary system using QB software and output to identify the key structural components in a building, input their specifications and output the results into colored I.D. tags and reports that are used to verify compliance with the construction specifications. Output is also directed to the field PDA for identification by a Field Representative during inspections, included as part of the required inspections above. There are two parts to FRAMER I.D., the take off and the data collection. Criterium may be authorized to collect data but not to conduct take offs and prepare labels. FRAMER I.D. may be sold by Criterium for a portion of the fee even if they are not licensed to complete the take off. Note that FRAMER I.D. has its own unique performance metrics that are separate from those defined for the contracted level of quality assurance services.

- **Resident Expert Training**

A QB program involving the builder's key superintendents to elevate their education and experience for improved construction quality. Each superintendent is responsible for one of the 12 main systems and shall become proficient in their evaluation, quality, complexity and interaction with other systems. This program is not fully developed and is intended to be an online educational program, backed by third-party assistance on an hourly basis to assist the builder in handling claims and design issues.

- **BUILDER RISK ASSESSMENT**

A QB proprietary program that includes assessing a given project or projects of a builder to render a numerical grade of proficiency. The work includes interviews of key personnel and filling out a questionnaire, site observations of all key systems in a prescribed quantity of homes, completion of an input report and output of a series of reports, photographs and training guides. BUILDER RISK ASSESSMENT may be sold by Criterium for a portion of the fee even if they are not licensed to provide the service.

- **QB RAPID RESPONSE PROGRAM[™]**

A QB proprietary program of organizing a builder's key construction, engineering, and lot file documents and converting them to electronic media for archive and rapid retrieval. This work is all done by QB with no Field Representative involvement. QB RAPID RESPONSE PROGRAM may be sold by Criterium for a portion of the fee even if they are not licensed to provide.

- **Rapid Response Inspection/Claims**

This is the second part of QB RAPID RESPONSE PROGRAM, necessary in those states that mandate a claims process prior to a homeowner filing a litigation action. Investigation is conducted by a Field Representative to respond to the written complaint filed by a homeowner. A process is followed including interview, observation and conclusions with a written report to the builder for action. It is anticipated that QB will create an electronic report methodology that eliminates any written reports in the future.

- **Builder Trade Contractor Training**

A series of QB proprietary training modules created to teach quality methods to the industry. A Field Representative qualified to teach the module will provide the hands-on training, followed up with online computer testing and certification.

- **Architectural Value Engineering**

A Field Representative qualified to conduct architectural peer review provides suggestions to reduce construction complexity while not compromising on quality.

- **Third-party Site Engineering**

A qualified Field Representative conducting site observations or other services may also provide contracted special inspection, materials testing or verification of soils compaction or placement, depending on the scope of services contracted. It is understood that no Field Representative or franchisee may be the architect or engineer of record on any project contracted to perform QB services.

- **QUALITY BUILT CLOSURE LINK™**

A QB proprietary software and hardware system that enables a builder to perform checkpoint closure documentation and photo capture on a contracted project, as well as other scheduling and data collection tasks. A Field Representative is only required to upload electronic data to a PDA capture device following a site inspection.

- **HOA TURNOVER (Home Owners Association Transition Study) – All Levels**

A series of inspections and reports relating to the legal transfer of common interest assets from a developer to an association.

- A. Level 1 – Common Area
- B. Level 2 – Common Area and Buildings

- **Technical Training**

- A. Level 1

- Technical training to the superintendent will be provided via the Internet. Topics will cover window installation, lath installation, framing, HVAC and roof. Access via web will be limited to 5 times per topic.

- B. Level 2

- Technical training to the superintendent and trade contractors will be provided by the Field Representative at window installation, lath installation, framing, and preliminary roof installation. Four independent training sessions – Limited to a total of 2.5 hours. All training in Level 2 is general information based upon litigation experience.

- C. Level 3

- Technical training to the superintendent and trade contractors will be provided by the Field Representative at window installation, lath installation, framing, and preliminary roof installation. Four independent training sessions – Limited to a total of 2.5 hours. Classroom setting is most appropriate for this training. Information will be conveyed utilizing PowerPoint. If there will be more than 5 attendees, we recommend an environment that will allow the use of an LCD projector. In addition, there are exams for all attendees and site-specific demonstrations and a review of most common anomalies found to date per trade.

- D. Level 4

- Customized Technical Training is also available. Builder may select the topic, the speaker, and the venue.

- **Diagnostic Testing**

- Level of Diagnostic Testing per Project Site

- Perform the diagnostic tests on models or as early in the project as possible.
 - Testing to be performed by a Field Representative

Diagnostic Testing Guidelines

	Number of homes in project	Number of homes to test	Man-hours	Tests and Training
Level 1	1 to 200 homes with QA Levels 1 or 2	2	4 hours	1. Flow Hood - Bathroom fan and laundry room fan
Level 2	1 to 50 homes with QA Level 3 or higher	2	4 hours	1. Flow Hood - Bathroom fan and laundry room fan
Level 3	201 to 400 homes with QA Levels 1 or 2	2	8 hours	1. Flow Hood - Bathroom fan and laundry room fan 2. Flow Hood - HVAC system in cooling and heating modes
Level 4	51 - 100 homes with QA Levels 3 or higher	2	8 hours	1. Flow Hood - Bathroom fan and laundry room fan 2. Flow Hood - HVAC system in cooling and heating modes
Level 5	401 or more homes with QA Levels 1 and 2	2	12 hours	1. Flow Hood - Bathroom fan and laundry room fan 2. Flow Hood - HVAC system in cooling and heating modes 3. Duct Blaster - HVAC system
Level 6	101-150 homes with QA Levels 3 and higher	2	12 Hours	1. Flow Hood - Bathroom fan and laundry room fan 2. Flow Hood - HVAC system in cooling and heating modes 3. Duct Blaster - HVAC system
Level 7	151 or more homes with QA Levels 3 and higher	2	18 hours	1. Flow Hood - Bathroom fan and laundry room fan 2. Flow Hood - HVAC system in cooling and heating modes 3. Duct Blaster - HVAC system (Total Duct Leakage @ 50PA test) 4. Blower Door - House envelope (Static Pressure Test, Worst Case Fan Depressurization Test, Modified Blower Door Test and Unmodified Blower Door Test)

EXHIBIT 2

QUALITY BUILT® INSPECTOR LEVELS

The following Inspector Levels have been identified and acknowledged by various insurers as minimum standards for the qualifications of personnel conducting QUALITY BUILT.COM® ("QB") inspections, site observations, claims and litigation support services. In all documentation, the words "Inspector" and "Field Representative" refer to the same scope of work and qualification standards dictated below. Criterium Engineers® is hereinafter referred to as "Criterium".

Additional certifications available to qualify: (QB certification required at all levels)

- ACI Concrete Field Testing Technician Grade 1
- Cheers/Hers Rater (state equivalent)
- College degree – Construction
- ICBO Building Inspector
- ICBO Building Plans Examiner
- ICBO Building Plans Inspector
- ICBO Combination Dwelling Inspector
- ICBO Combination Plans Examiner
- ICBO Electrical Inspector
- ICBO Mechanical Inspector
- ICBO Plans Examiner
- ICBO Property Maintenance and Housing Inspector
- ICBO Residential Electrical Inspector
- ICBO Residential Mechanical Inspector
- ICBO Residential Plumbing Inspector
- ICBO Special Inspector*
- Licensed architect, Professional engineer, Structural engineer, or Civil Engineer
- NRCA Roof Inspector
- State General Contractor's License (may be placed on inactive)

*All requirements of current level must be achieved and next level before advancing level can be made/achieved.

All costs and expenses to obtain certifications is the responsibility of Criterium.

LEVEL 1 INSPECTOR

Completion of QB Certification of Level 1 Training

Upon completion of Level 1 certification, an Inspector would be able to accept assignments for the following types of construction/systems and concepts:

- **QB Site Observations – All Levels**

Single -family detached and multi-family five stories or less:

- Offsite
- Foundations
- Structural Framing
- Insulation
- Mechanical
- Plumbing
- Electrical
- HVAC
- Roof System (preliminary and final)
- Exterior Cladding (preliminary and final)
- Thermal
- Acoustic (N/A on SFD projects)
- Life Safety
- Finishes
- Site Work (household) (N/A on High-rise projects)

Must have minimum of one (1) approved additional certification (defined above).

Six-month duration required at Level 1 before inspector may request training at Level 2.

Each service level is defined by the mandated checkpoints as determined by the Checkpoint System Software. The QB Software Risk Prediction Software may prioritize and randomize various mandatory checkpoints pursuant to historical risk, regional legal risk, climate zones and other specialized risk factors.

LEVEL 2 INSPECTOR

Completion of QB Certification of Level 2 Training.

Upon completion of Level 2 certification, an Inspector would be able to accept assignments for the following types of construction/systems and concepts:

- **HOA TURNOVER – All Levels**
- **FRAMER I.D.™ take off**
- **Sales Training**

Must have minimum of one (1) approved additional certification.
Six-month duration required at Level 2.

LEVEL 3 INSPECTOR

Completion of QB Certification of Level 3 Training.

Upon completion of Level 3 certification, an Inspector would be able to accept assignments for the following types of construction/systems and concepts:

- Diagnostic Testing: Blower door/duct blaster/flow hood/automated performance testing
- **ASTM window testing**
- **VET Vapor emissions test**
- **Monometer survey**

Must have minimum of one (1) approved additional certification.

One-year duration required at Level 2.

LEVEL 4 INSPECTOR

Completion of QB Certification of Level 4 Training.

Upon completion of Level 4 certification, an Inspector would be able to accept assignments for the following types of construction/systems and concepts:

- **TECHNICAL PLAN REVIEW**

Two-year duration required at Level 3.

LEVEL 5 INSPECTOR

Completion of QB Certification of Level 4 Training. Fee will vary depending on system selected and previous skills and experience.

Upon completion of Level 5 certification, an Inspector would be able to accept assignments for the following types of construction/systems and concepts:

- **Resident Expert**
- **Forensic Investigations**

QB certified to conduct intrusive investigation observations and customer service problem solving investigations and ability to document evidence, testing and compilation of narrative report.

EXHIBIT 3
PERCENTAGE ALLOCATION

FIELD SERVICES/ PRODUCTS	LEVELS	CORPORATE*		JOINT*		LOCAL*	
		QB	CE	QB	CE	QB	CE
		%	%	%	%	%	%
	L1 Existing Contracts Prior to January 2004	35	65	NA	NA	NA	NA
	L1	40	60	35	65	30	70
	L2	40	60	35	65	30	70
	L3	40	60	35	65	30	70
	L4	40	60	35	65	25	75
	L5	40	60	35	65	30	70
	L6 QA Fee %/ Builder Link %	40/95*	60/5*	35/95*	65/5*	30/90*	70/10*
	L1 Included in per Unit fee	NA	NA	NA	NA	NA	NA
	L1 Additional plan/building types If only for additional fee	10	90	50	50	10	90
	L2	25	75	20	80	15	85
	L3	25	75	20	80	15	85
	L4	25	75	20	80	15	85
	L5	25	75	20	80	15	85
	Commercial Building	25	75	20	80	15	85
	Not yet released	25	75	20	80	10	90

	L1 Observations	40	60	35	65	30	70
	L2 Observations	40	60	35	65	30	70
	L3 Observations	40	60	35	65	30	70
	Take-off All Levels	100		TBD**	TBD**	10	90
	N/A	40	60	35	65	30	70
	N/A	40	60	35	65	30	70
	Set up fee	100	0	85	15	90	10
	Per Unit fee	100	0	100	0	95	5
	Inspection	20	80	15	85	10	90
	N/A	30	70	25	75	20	80
	N/A	25	75	20	80	15	85
	N/A	20%	80	15	85	10	90
	N/A	95	5	92	8	90	10
	N/A	95	5	92	8	90	10
	L1 Common Area Included in per Unit fee	NA	NA	NA	NA	NA	NA
	L2 Common Area and Buildings	40	60	35	65	30	70
	L1 Via Internet	NA	NA	NA	NA	NA	NA
	L2	40	60	35	65	30	70
	L3	40	60	35	65	30	70
	L4	40	60	35	65	30	70
	All Levels Included in per Unit fee	NA	NA	NA	NA	NA	NA

	All Levels Supplemental If only for additional fee						
		CORPORATE		JOINT		LOCAL	
		QB	IC	QB	IC	QB	IC
FIELD SERVICES/ PRODUCTS	LEVELS	%	%	%	%	%	%
	L2 and higher	100		95	5	90	10

* It is assumed that Criterium Engineers® is doing all work related to the service regardless of type of account. If for whatever reason Criterium Engineers® is not, then the fee split is null and void. QUALITY BUILT.COM® may adjust the fee split to reflect a more equitable distribution. Exceptions are Technical Plan Review - L2 and higher and Rapid Response.

** 85% will go to the party that conducts the Take off and creates the FRAMER ID labels. 15% will go to the other party.

EXHIBIT 4

PROPRIETARY INFORMATION AND ASSIGNMENT OF INVENTIONS AGREEMENT

1. Proprietary Information

- A. The term "PROPRIETARY INFORMATION" shall mean all information that is either non-public, confidential or proprietary in nature including without limitation the identity of all customers, customer specifications, clients, proprietary processes, business model information, business strategies, marketing strategies, operating procedures and know-how (as defined herein) and all other trade secrets including any and all samples, drawings, specifications, data processes, technical information and other confidential matters including any information relating to existing or prospective clients, sponsoring insurance carriers or projects. Further confidential information includes proprietary databases and other compilations of data or information, proprietary techniques for finding, analyzing and distributing data or information, proprietary computer system components, including hardware, software, firmware, languages, models, algorithms and documentation, business methods and practices, confidential proprietary or trade secret information submitted by developers, builders, or insurance carriers for study, evaluation or use, and information about personnel, products, services, or future business plans.
- B. The term "know-how" shall mean all factual knowledge and information in an accumulated form, which gives to the one acquiring the knowledge and information the ability to undertake the given process or project.
- C. Criterium Engineers® (hereinafter referred to as "Criterium") agrees that it will take reasonable steps to hold secret and confidential and to not disclose, make known, divulge or communicate to any person or entity the PROPRIETARY INFORMATION disclosed by QUALITY BUILT.COM® (hereinafter referred to as "QB").
- D. The PROPRIETARY INFORMATION disclosed by QB shall not be used by Criterium for any purpose other than accomplishing the scope of the work mutually agreed to between the parties.
- E. Criterium will not without the prior written consent of QB disclose any portion of the PROPRIETARY INFORMATION to others except the officers, directors, employees, and representatives of Criterium who have agreed to be bound by the obligation of confidentiality under this Agreement.
- F. Any and all information disclosed by QB to Criterium pursuant to this Agreement shall be deemed PROPRIETARY INFORMATION and shall remain the property of QB unless otherwise agreed in writing by parties.
- G. If a third party requests the Criterium or any of its employees or advisors to submit information to them pursuant to subpoena, summons, search warrant or governmental order, Criterium will make reasonable attempts by all available means to notify QB immediately upon receipt of such request, and thereafter deliver written notice of the request to QB no later than three business days after receipt by Criterium.
- H. Neither party hereto shall have any obligation or liability to the other party with respect to any portion or whole of PROPRIETARY INFORMATION:

- i) That such party can demonstrate was known or accessible to them prior to or at the time of disclosure and which was not acquired, directly or indirectly, from the other party;
- ii) That is available in the public domain through no illegality of the party receiving such information hereunder;
- iii) That is legally received from a third party having a legal right to transmit the same; or
- iv) That was independently developed by either party without reliance on the PROPRIETARY Information.

2. **TERM.** The obligations herein shall survive the termination of any agreement of which this Exhibit 4 it is a part or exhibit, and the obligations above shall remain in effect for ~~three~~ (3) years from the date of termination or expiration of the original agreement, including renewed or extended periods of such original agreement of which this Exhibit 4 is a part. All proprietary information furnished by QB to Criterium shall remain the property of QB and shall be returned to that party, and all copies thereof destroyed within sixty (60) days after the termination of the Agreement of which this Exhibit 4 is a part.

3. INVENTIONS AND PROPRIETARY RIGHTS.

3.1 **Prior Inventions.** Inventions, if any, patented or unpatented, which Criterium made or obtained prior to the commencement of this agreement with QB are excluded from the scope of this Agreement. To preclude any possible uncertainty Criterium has set forth on Exhibit 4-1 (Prior Inventions) attached hereto a complete list of all Inventions that Criterium has, alone or jointly with others, conceived, developed obtained or reduced to practice or caused to be conceived, developed obtained or reduced to practice prior to the commencement of this Agreement, that Criterium considers to be Criterium property, procedures, or policies or the property of third parties and that Criterium wishes to have excluded from the scope of this Agreement (collectively referred to as "Prior Inventions"). If disclosure of any such Prior Invention would cause Criterium to violate any other confidentiality agreement, Criterium understands that Criterium is not to list such Prior Inventions in Exhibit 4-1 but is only to disclose a cursory name for each such invention, a listing of the party(ies) to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided on Exhibit 4-1 for such purpose. If no such disclosure is attached, Criterium represents that there are no Prior Inventions. If, in the course of work for QB, Criterium incorporates a Prior Invention into a QB product, process or machine, QB is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use and sell such Prior Invention. Notwithstanding the foregoing, Criterium agrees that Criterium will not incorporate, or permit to be incorporated, Prior Inventions in any QB Inventions without QB's prior written consent.

3.2 **Assignment of Inventions.** Subject to the foregoing, Criterium hereby assigns and agrees to assign in the future (when any such Inventions or Proprietary Rights are first reduced to practice or first fixed in a tangible medium, as applicable) to QB all rights, title and interest in and to any and all Inventions (and all Proprietary Rights with respect thereto) whether or not patentable or registrable under copyright or similar statutes, made or conceived or reduced to practice or learned by Criterium, either alone or jointly with others, during the period of Criterium's work with QB. Inventions assigned to QB, are hereinafter referred to as "QB Inventions". In accordance with California Labor Code Section 2872, Criterium is hereby notified that notwithstanding the foregoing, Criterium's agreement to assign inventions to QB does not apply to any invention which qualifies fully under the provisions of California Labor Code Section 2870. In accordance with Labor Code Section 2870, nothing contained herein shall operate to assign to QB any invention that Criterium developed entirely on his or her own time without using QB's equipment, supplies, facilities or trade secret information, except for those inventions that either: 1) relate at the time of conception or reduction to practice of the invention to QB's business or actual or demonstrably anticipated research or development of the employer; or 2) result from any QB's Services performed by Criterium for QB.

- 3.3 Obligation to Keep QB informed.** During the term of this agreement, Criterium will promptly disclose to QB fully and in writing all Inventions authored, conceived or reduced to practice by Criterium, either alone or jointly with others. In addition, Criterium will promptly disclose to the QB all patent applications filed by Criterium or on behalf of Criterium.
- 3.4 Government or Third Party.** Criterium also agrees to assign all rights, title and interest in and to any particular QB Invention to a third party, including without limitation the United States, as directed by QB, provided, however, that any such assignment shall not in any way operate or be construed as a transfer or assignment of any other obligation of Criterium.
- 3.5 Enforcement of Proprietary Rights.** Criterium will reasonably assist QB in QB's efforts to enforce its proprietary rights in QB Inventions, including making relevant and non-privileged documents available for inspection, signing documents reasonably related to such assistance, responding lawfully to subpoenas duces tecum, making written statements, providing its employees and principals for sworn statements, depositions, or trial or arbitration testimony within Washoe County, Nevada, and otherwise rendering reasonable and not unduly burdensome assistance within Washoe County, Nevada. Additionally, if requested by QB, Criterium will make reasonable effort to provide its employees and principals as witnesses for taking of sworn statements, depositions, or court or arbitration testimony within 100 miles of the location of any work performed by Criterium outside of Washoe County, Nevada, provided however, that in such event QB must pay the reasonable travel, lodging, per diem, and other reasonable expenses, including if reasonable attorney fees and costs, incurred in rendering such assistance and, if such expenses are reasonably anticipated to exceed \$500, QB must pre-pay such expenses or make other arrangements mutually agreeable to QB and Criterium. These obligations of reasonable assistance shall survive for a period of two (2) years after the termination of this Agreement or any renewed or extended such Agreement.
- 4. RECORDS.** Criterium agrees to keep and maintain current records, such as notes, sketches, drawings and other reasonable records of all Proprietary Information developed or invented by Criterium and Inventions made by Criterium during the period of this Agreement and disclosed by Criterium or which have become that of QB by virtue of paragraphs 3.1 or 3.2 of this Exhibit "4", which records shall be available to QB for inspection upon reasonable written request.
- 5. NO CONFLICTING OBLIGATION.** Criterium represents that Criterium's work for QB does not and will not, to the best of Criterium's understanding, breach any agreement to keep in confidence information acquired by Criterium in confidence or in trust prior to Criterium's work for QB. Criterium has not and will not enter into any agreement either written or oral in conflict herewith.
- 6. LEGAL AND EQUITABLE REMEDIES.** QB shall have the right upon proper proof to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that QB may have for a breach of this Agreement.
- 7. NOTICES.** Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the Party shall specify in writing. Such notice shall be deemed given upon personal delivery to the appropriate address or if sent by regular certified or registered mail, three days after the date of mailing if the destination address is within the continental United States.

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT 4-1 TO THIS AGREEMENT.

Dated: Jan 16, 2006

Criterium Engineers®

BY: H. A. M. MOONEY

NAME: H. A. M. MOONEY

TITLE: PRESIDENT

ACCEPTED AND AGREED:

QUALITYBUILT.COM®, A CALIFORNIA CORPORATION

Dated: _____, 200__

BY: _____

NAME: _____

TITLE: _____

Exhibit 4-1

TO: **QUALITY BUILT.COM®**, a California Corporation ("QB")

FROM: **Criterion Engineers®** ("Criterion")

DATE: Jan 16, 2006

SUBJECT: **Prior Inventions**

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my work for QB that have been made or conceived or first reduced to practice by Criterion alone or jointly with others prior to Criterion's work with QB:

☒ No inventions or improvements.

☐ See below:

See Attached Exhibit A.

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, Criterion cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which Criterion owes to the following party(ies):

	Invention or Improvement	Party(ies)	Relationship
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

☐ Additional sheets attached.

January 14, 2006

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EXHIBIT 5

LICENSED TRADEMARKS AND PATENTS

Existing or pending patents with supporting copyrights:

BUILDER RISK ASSESSMENT
BUILDER QUALITY ASSURANCE
PRODUCT IDENTIFICATION, WARRANTY AND UNIQUE HOME
IDENTIFICATION SYSTEM

Trademarks:

QUALITY BUILT.COM®
QUALITY BUILT®
Q design®
QB BUILDER LINK™
QB CLOSURE LINK™
QB RAPID RESPONSE PROGRAM™
BUILDER I.D.®
FRAMER I.D.®
PERFECTING THE ART AND SCIENCE OF QUALITY IN HOME BUILDING®
BUILDER RISK ASSESSMENT
TECHNICAL PLAN REVIEW
RESIDENT EXPERT PROGRAM

EXHIBIT 6

EQUIPMENT LIST

FIELD EQUIPMENT KIT VERIFICATION

This Field Equipment Kit contains the items noted below. Each item, including system logins and passwords, has been tested and verified by a Quality Built Technician.

Please sign & fax back to Quality Built ATTN: Technical Support.

User Information

Computer Login: _____

Computer Password: _____

QB VPN User Name: _____

QB VPN Password: _____

Configured Applications

- ☐ SonicWall IPsec VPN
- ☐ QB Field Rep Application
- ☐ Symantec Anti-Virus
- ☐ Adobe Acrobat Reader

Accessories Compatibility

- ☐ Camera
- ☐ Printer

Contents of Kit

☐ Suitcase	☐ 6' Network Cable
☐ Panasonic Toughbook S/N _____	☐ 12V DC to AC Power Inverter
☐ Carrying Case	☐ Canon Inkjet Printer S/N
☐ Harness	☐ Canon AC Adapter
☐ Laptop AC Adapter	☐ Logitech USB Camera
☐ Two (2) Panasonic Batteries	☐ Manual
☐ 6" USB Cable	

Computer assembled by: _____

Date: _____

Computer Tested by: _____

Date: _____

Equipment accepted by: _____

Date: _____

EXHIBIT 7

ACKNOWLEDGEMENT FORM

ACKNOWLEDGEMENT FORM FOR CRITERIUM ENGINEERS® EMPLOYEES, AGENTS, EMPLOYEES, AND SUB CONTRACTORS

Agreement to be bound by the terms of the Agreement between Criterium Engineers® and QUALITY BUILT.COM®. I have read and understand the terms of the Master Services and Licensing Agreement between Criterium Engineers® ("Criterium") and QUALITY BUILT.COM® ("QB"), which is attached to this acknowledgement and incorporated by reference herein. In consideration of the work I will or may be assigned relating to the QB system, I agree to be bound by the terms of the Master Services and Licensing Agreement between Criterium and QB when performing work under the QB system.

Agreement to protect and maintain trade secrets and intellectual property rights of QB. I recognize and acknowledge that QB has, through the expenditure of substantial time, effort and money, developed and acquired certain confidential information and trade secrets, which have become of great value to QB in its operations. I further acknowledge and understand that in the course of performance of my duties I will receive training and experience and have access to the trade secrets and confidential information of QB.

This information (trade secrets) consists of customer lists, customer specifications, business model information, software, forms, operating procedures, marketing strategies and methods, lists of sponsoring insurance carriers and their points of contact, identity of key personnel with insurance carriers, information regarding insurance carrier's plans for incentives being offered to insureds for obtaining inspections during new construction, and other information, techniques, hardware models and specialized equipment, manuals, data, algorithms and analysis of data and risk trends, inspection methods and reports, training materials and other risk and construction loss information, policies and procedure manuals; video, audio and written training and certification programs, internet and other electronic information pertaining to the QB system.

1. I acknowledge that as a consequence of my employment a duty and trust has been imposed upon me not to use, disseminate or allow acquisition of any such materials to others either during or after my employment. I agree that upon receiving a request from QB, I will promptly return all Materials including trade secrets and confidential information in my possession and all copies thereof in any media format.
2. During the course of my employment and in the event of its termination, whether with or without cause by either party, or during the course of any future employment or undertaking, I agree not to disclose such information to any party, nor to use such information on my own behalf except as required in the course of my employment working on QB systems projects.
3. I specifically note that I have read and agree to be bound by the selection of law provision (California), the arbitration provision, and the venue provision (San Diego, California) of the Master Services and Licensing Agreement.

-
4. I also specifically note that I have read and agree to abide by the provisions concerning intellectual property of QB including patents and trademarks, as referred to in the Master Services and Licensing Agreement.
 5. I have received a copy of this acknowledgement and agreement.

Name

Date

Title

Name of Employer

January 14, 2006

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EXHIBIT 8
2006 PRICING GUIDELINES

(Pricing Subject To Change)

Technical Plan Review

Technical Plan Review Level 1

Included in bundled services, no additional charge*

Mandated: (Arch, Contractors Choice, Lexington/Colorado/CV Starr/Navigator): No limit, but number of plan types or building types must be known for planning purposes.

Non-Mandated/Preferred (Zurich, Everest, HCIC, Glencoe)

Single Family Homes - number of plan types that may be included

1-35 Homes - 1 Plan Type (max 3 elevations/options per plan type)

36-75 Homes - 2 Plan Types (max 3 elevations/options per plan type)

76 + Homes - 3 Plan Types (max 3 elevations/options per plan type)

Non-Mandated/Preferred (Zurich, Everest, HCIC, Glencoe)

Multi-family Homes – number of building types that may be included

1-75 Homes (condos/townhomes) - 1 building type

76+ Homes (condos/townhomes) - 2 building types

*Sales Account Managers may not include Technical Plan Review Level 1 as a bundled service to volunteers without prior authorization from the Sales Manager.

Studying your plans and details from a litigation perspective and utilizing our skill and experience from hundreds of construction claim cases, we work closely with your design staff to avoid potential design problems and details.

We will study your details using a 50 to 60-point "standard checklist" of the highest risk items based upon our litigation and forensic experience. When complete, you will receive a written report that documents our findings and recommendations with those items that apply to your project only.

Technical Plan Review Level 2

Single Family Homes

\$1,250 per plan type, single story; \$2,000 per plan type, two+ stories

(Up to 3 elevations each plan type)

Studying your plans and details from a litigation perspective and utilizing our skill and experience from hundreds of construction claim cases, we work closely with your design staff to avoid potential design problems and details.

This comprehensive level of service includes all aspects of your plans and details. We look for ambiguous details, incomplete details and details that have historically failed and we create a "customized checklist" for your project. Your written report includes red-lined details and a second review to verify closure to all open items.

When complete, you will receive a written report that documents our findings and recommendations with those items that apply to your project only. Your written report includes red lined-details and a second review to verify closure to all open items.

Technical Plan Review Level 3

Attached Housing / Mixed Use 5 stories or less

\$850 to \$1,000 per floor, per building type

\$3,500 minimum

Studying your plans and details from a litigation perspective and utilizing our skill and experience from hundreds of construction claim cases, we work closely with your design staff to avoid potential design problems and details.

This comprehensive level of service includes a review of all aspects of your plans and details. We will study your details of the highest risk items based upon our litigation and forensic experience. We look for ambiguous details, incomplete details and details that have historically failed and we create a "customized checklist" for your project.

Your written report includes red-lined details and a second review to verify closure to all open items, with additional time spent on evaluating the completeness of Area Separation Walls, Occupancy Separation Assemblies, and any subterranean waterproofing systems. When complete, you will receive a written report that documents our findings and recommendations with those items that apply to your project only.

Technical Plan Review Level 4

Residential / Hotels / Mixed Use

Mid Rise 6 to 12 stories

\$500 to \$1,250 per floor

\$6,000 minimum

High Rise 13 stories or more

\$500 to \$1,250 per floor

\$10,000 minimum

Please finalize budget with the Director of Architectural Services prior to submitting proposal to client.

Studying your plans and details from a litigation perspective and utilizing our skill and experience from hundreds of construction claim cases, we work closely with your design staff to avoid potential design problems and details.

This plan review includes all of the Level 3 services with additional time spent on exterior cladding (integration of exterior cladding with balconies, decks and fenestrations), parapet walls, more complicated roofing and HVAC systems, elevated pools/spas. Quality Built® will create a "customized checklist" for your project.

Technical Plan Review Level 5

Mid – High Rise Residential / Hotels / Mixed Use

5 to 20 stories at \$20,000 minimum. Building with EIFS add \$5,000

21 to 40 stories at \$30,000 or \$750 per floor. EIFS add \$3,000.

More than 40 stories starts at a minimum of \$30,000 and is at \$500 per floor above 40 floors. EIFS add \$1,500.

Construction must not start for minimum of 6 months.

Pricing Needs Final Approval from Architectural Services (Pilot Formula)

Level 5 Plan Reviews occur in stages:

Stage 1: (12 to 16 man-hours): Preliminary Technical Plan Review: Plans are to be submitted when in preliminary to 30% complete.

AS will identify the main details that should be provided and prepare a list of details and recommendations. At this stage we will also include 2 hours consultation on the phone. SAM must determine point of contact for design review.

Stage 2 (40 to 80 man-hours): Final Technical Plan Review: Plans are to be submitted when 70% to 80% complete.

AS will review the plans with emphasis in the following areas:

- EIFS System
- Podium Decks Waterproofing
- Foundations Waterproofing
- Building Envelope etc.

Stage 3 (72 to 120 man-hours): Re-submittal of Plans and final detail consultation.

At this stage AS will review Mock Up details if available at no additional charge.

This Premier Comprehensive Plan Review consists of multiple stages and typically takes between 6 to 8 weeks total to complete. AS will analyze all aspects of your plans and details. The review will include a complete evaluation of the building envelope to prevent water penetration. All elevations will be carefully analyzed with additional time spent on evaluating completeness for balconies, decks and wall transitions, roof assemblies, trellises or any décor penetrating the building; podium decks, area separation walls, planters on top of podium decks, subterranean waterproofing systems, EIFS, exterior finish transitions, interior details, fire rated wall details, and more.

Quality Built will spend approximately to 80-200 man-hours on the review. The process is broken up into three stages; first AS will conduct a preliminary review that will last approximately two days and require that the construction of plans are at least 30% complete. We will identify the main details that should be provided and develop a list of details and recommendations for your design team. Architectural Services will be available for phone consultation at no additional charge (budgeted 2 hours).

The second stage in the process lasts 40-60 man-hours. QB requires your plans be at least 70% complete. This stage encompasses EIFS System (if it applies), podium decks waterproofing, foundations waterproofing, and building envelope.

The third stage of the process is a re-submittal of the plans and a final detail consultation.

Technical Plan Review Commercial Buildings Level 1

(Examples: Non-mixed use, Schools, Retail space, Offices, Community Center, Hospitals, Training Facilities, etc.)

(No one will reside in these buildings)

Up to 10,000 sq ft minimum of \$2,000 + 1,000 extra per floor, per building type

Add \$2,500 flat fee for underground parking or podium deck

Add \$2,500 flat fee for EIFS

Pricing Needs Final Approval from Architectural Services (Pilot Formula)

This comprehensive level of service includes the following limited scope:

- ***Review of Building Envelope***
- ***Elevations***
- ***All Architectural Details (Interior / Exterior)***
- ***Roof Assemblies***
- ***Area Separation Walls***

AS will look for ambiguous details, incomplete details, and details that have historically failed and we create a "customized checklist" for your project. When complete, you will receive a written report that documents our findings and recommendations with those items that apply to your project only. Your written report includes red lined-details and a second review to verify closure to all open items.

Plan Review Delivery and Expectations

When should the client expect the Plan Review to be completed?

Level 1 Plan Review

Your written report will be complete approximately 6 to 8 weeks from the receipt of both the signed contract and the plans.

Level 2 to 5 Residential Plan Reviews plus Technical Plan Review Commercial Buildings Level 1

It is very important to ask several questions regarding the "status of the project" prior to setting the expectations of delivery. These types of comprehensive Technical Plan Reviews are more helpful to the client if the construction has not yet started and the client is in the "process of construction of the plans". In this way, Quality Built® and the architects can work closely to make the necessary changes "prior" to construction. This is mandatory for Level 6 Premier Plan Review. The project should be at an earliest drawing documents stage, right after the Design stage is completed and the construction details stage starts. Minimum 6 to 8 months prior breaking ground is scheduled.

If the construction has started or will start within the next month, the client should "agree" on receiving this review 6 to 8 weeks after contract has been signed by both parties (Client and Quality Built), and understand that some of our recommendations may not apply due to construction already in progress. This will not apply for Level 6.

General Note: Quality Built® will not recommend materials or systems to use in general for your project. Quality Built® will only advise not to use certain materials and systems that have historical failure based on our experience with litigation.

Once a Plan Review has been sold, the following are helpful tips that will help Architectural Services to deliver the Service in a timely manner:

The client should fill out the Project Information sheet and or attach to the plans a transmittal letter with **Builder Name, Division and Project Name** for identification.

If the plans are **re-submitted** the client should attach a transmittal letter to the plans clarifying that the plans are a **Re-submittal**, with Builder and Project name.

Builders are to forward the Technical Plan Review to the architects/design team for any necessary corrections. Once the corrections have being made, Quality Built® will review a re-submittal of the new plans (only one re-submittal will be reviewed) for verification. If all items are satisfactorily addressed, Quality Built® will send a closure letter to the client.

INSTRUCTIONS FOR SUBMITTAL APPLY TO ALL LEVELS OF PLAN REVIEW

Framer ID™

Framer ID Level 1*

Single Family Homes

\$850.00 per plan type for take off, maximum 3 elevations per home, single story

Add \$200 for 2 story plan type for take off

There is a \$1,500.00 minimum for this service.

\$75 per unit labels/maps/summary sheet

***Additional fees will be charged for two-story single family homes, additional elevations, optional rooms and/or garages.**

Architectural Services will do a take off of all major structural components. All services include labels, maps, summary sheets and training to the superintendent and framer. Per unit charge includes data collection in the field specific to Framers ID labels. (30 to 45 minutes per unit.)

Framer ID Level 2:*

Single Family Homes 4,000 square feet and over

\$1,000 per plan type for take off, maximum 3 elevations per home, single story

Add \$350 for 2 story plan type for take off

There is a \$2,500.00 minimum for this service.

\$85 per unit labels/maps/summary sheet

***Additional fees will be charged for two-story single family homes, additional elevations, optional rooms and/or garages.**

Architectural Services will do a take off of all major structural components. All services include labels, maps, summary sheets and training to the superintendent and framer. Per unit charge includes data collection in the field specific to Framers ID labels. (30 to 45 minutes per unit.)

Framer ID Level 3:

Attached/wood framed structures

Town Homes (Building that has party wall between units)

\$3,000.00 to \$5,000.00 per building type for take off

\$75 per unit labels/maps/summary sheet

The above price should increase when the average of the unit number between all buildings involved are more than 15 units. In that case use the following formula:

Example:

Building A: 20 Units

Building B: 15 Units

Average: $17.5 \times \$350 = \$6,125$ per building type for take off

Multiply the average number of units per building by **\$350** to obtain cost per building type.

Architectural Services will do a take off of all major structural components. All services include labels, maps, summary sheets and training to the superintendent and framer. Per unit charge includes data collection in the field specific to Framer ID labels. (30 to 45 minutes per unit.)

Stacked Condominium Building (Building with 1 story units)

\$5,000.00 minimum per building type for take off

Please note that any reconfiguration of unit plan types will constitute a new building type.

\$75 per unit labels/maps/summary sheet

2 Story wood framed building

The above price should increase when the average of the unit number between all buildings involved are more than 15 Units. In that case use the following formula:

Building A: 20 Units

Building B: 15 Units

Average: $17.5 \times \$350 = \$6,125$ per building type for take off

Multiply the average number of units per building by **\$350** to obtain cost per building type.

3 to 4 Story wood framed building multiply the average number of units per building by **\$400** to obtain cost per building type.

5 Story wood framed building multiply the average number of units per building by **\$460** to obtain cost per building type

Pricing should be approved by Architectural Services (Pilot Formula)

Architectural Services will do a take off of all major structural components. All services include labels, maps, summary sheets and training to the superintendent and framer. Per unit charge includes data collection in the field specific to Framer ID labels. (30 to 45 minutes per unit.)

Quality Assurance

Quality Assurance Level 1*

Single Family Homes

\$200.00 per unit is the defined minimum

Standard Fee - \$250.00

Quality Built® Field Representatives will collect data based upon a per unit average. Contact time will average between 1 and 1.5 hours per unit. Contact time is defined as data collection, time checking in and out with Superintendent, time spent checking plans and other construction

documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Checkpoints will average 60 to 90 checkpoints per unit. Not all units receive data collection. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet.

Quality Assurance Level 2*

Single Family Homes

**\$275.00 per unit is the defined minimum
Standard Fee - \$350.00**

Quality Built Field Representatives will collect data based upon a per unit average. Contact time will average between 2 and 2.5 hours per unit. Contact time is defined as data collection, time checking in and out with Superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Field Rep will collect an average of 120 checkpoints per unit. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet. Not all units will receive data collection.

*** Not available on attached units.**

Quality Assurance Level 3

**\$350.00 per unit is the defined minimum
Standard Fee - \$550.00**

Quality Built Field Representatives will collect data based upon a per unit minimum. Contact time will average between 2.5 and 3 hours per unit. Contact time is defined as data collection, time checking in and out with Superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. A Field Rep will collect a minimum of 180 checkpoints per unit. Not all systems are included. Each level of quality assurance service includes access to our Quality Built Information Network (QBIN) via the Internet.

Quality Assurance Level 4

**\$550.00 per unit is the defined minimum
Standard Fee - \$675.00**

Quality Built Field Representatives will collect data based upon a per unit minimum. Contact time will average between 4 and 4.5 hours per unit. Contact time is defined as data collection, time checking in and out with Superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Field Rep will collect a minimum of 240 checkpoints per unit. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet.

Quality Assurance Level 5

\$825.00 per unit is the defined minimum

Standard Fee - \$1000.00

Quality Built Field Representatives will collect data based upon a per unit minimum. Contact time will average between 6 and 8 hours per unit. Contact time is defined as data collection, time checking in and out with Superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Field Rep will collect a minimum of 450 checkpoints per unit. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet.

Quality Assurance Level 6 (DO NOT OFFER UNTIL FURTHER NOTICE)

\$725.00 per unit is the defined minimum

Standard Fee - \$775.00

Quality Built Field Representatives will collect data based upon a per unit minimum. Contact time will average between 4 and 4.5 hours per unit. Contact time is defined as data collection, time checking in and out with Superintendent, time spent checking plans and other construction documents and training. QB requires that a minimum of 75% of contact time be in the collection of data. Field Rep will collect a minimum of 240 checkpoints per unit. Each level of quality assurance service includes access to the Quality Built Information Network (QBIN) via the Internet. In addition, builder will receive Quality Built Builder Link for use by builder's internal quality assurance department.

Reference Only: Builders must be on the Quality Built system for a period of 1 year at a lower level before eligible.

Technical Training

Determining Technical Training Level to Include as Part of Bundled Fee:

Level 1 Training Bundled:

All Builders receive Level 1 Training bundled with any Quality Assurance Level.

Level 2 Training Bundled:

Builders with 100 units and over receive Technical Training Level 2 bundled with contract for Quality Assurance Levels 3 and higher.

Builders with 400 units and over receive Technical Training Level 2 bundled with contract for Quality Assurance Levels 1 and 2.

Technical Training Level 1

QBIN Access

Bundled Services

Technical training to the superintendent will be provided via the Internet. Topics will cover window installation, lath installation, framing, HVAC and roof. Access via web will be limited to 5 times per topic.

Technical Training Level 2

QBIN Access

Classroom Training

Bundled for larger builders or upgrade fee of \$850 per topic

Technical training to the superintendent and trade contractors will be provided by the Field Representative at window installation, lath installation, framing, and preliminary roof installation. Four independent training sessions – Limited to a total of 2.5 hours. All training in Level 2 is general information based upon our litigation experience.

Classroom setting is most appropriate for this training level. Information will be conveyed utilizing PowerPoint. If there will be more than 5 attendees, we recommend an environment that will allow the use of an LCD projector.

Technical Training Level 3

QBIN Access

Classroom Training

Live Field Demonstrations

Upgrade fee from Level 1 is \$1,000.00 per topic

Upgrade fee from Level 2 is \$150.00 per topic

Technical training to the superintendent and trade contractors will be provided by the Field Representative at window installation, lath installation, framing, and preliminary roof installation. Four independent training sessions – Limited to a total of 2.5 hours. Classroom setting is most appropriate for this training. Information will be conveyed utilizing PowerPoint. If there will be more than 5 attendees, we recommend an environment that will allow the use of an LCD projector. In addition, there are exams for all attendees and site-specific demonstrations and a review of most common anomalies found to date per trade.

Technical Training Level 4

Fees range from \$1,250.00 to \$5,000 per day, plus travel expenses.

Customized Technical Training is also available. Builder may select the topic, the speaker, and the venue.

Diagnostic Testing Requirement Standards Per Amount of Homes Under Contract

To up sell diagnostic testing take the man-hours for the higher level of service, subtract the man-hours for the lower service. Multiply the difference by the current hourly rate and that is the cost to upgrade the service.

To provide services on additional homes you simply multiply the number of man-hours by the current hourly rate and you have a budget for 2 additional homes. At this point you can divide by 2 for a per home fee and then multiply times the number of homes to be tested. There is a minimum requirement of 2 homes per level.

- *Perform the diagnostic tests on Models or as early in the project as possible.*
- *Testing to be performed by Quality Built® Field Representative*

HOA Turnover

HOA Turnover Level 1:

Included in bundled services with contract for Quality Assurance Level 4 or higher.

HOA Common Area Turnover: At the time that the project is released to the HOA, Quality Built will provide site documentation for all common area amenities including exterior lighting, sidewalks, curbs, parking area and hardscape, irrigation, draining and landscape, perimeter fencing, trash enclosures, fire hydrants, mailboxes, signage and monuments, utility shut off controls, pools and spas.

Includes two site visits: The first site visit documents common area conditions and identifies any builder deferred maintenance or lingering construction issues. A written report of these deficiencies will be provided. Second site visit only documents correction of all items included in the written deficiencies report. An HOA Final Report will be issued following the second visit.

HOA Turnover Level 2:

**Upgrade from Level 1: \$250 to \$600 per building.
Minimum: \$1,500.00**

HOA Building and Common Area Turnover: At the time that the project is released to the HOA, Quality Built will provide site documentation for all common area amenities including exterior lighting, sidewalks, curbs, parking area and hardscape, irrigation, draining and landscape, perimeter fencing, trash enclosures, fire hydrants, mailboxes, signage and monuments, utility shut off controls, pools and spas, plus site documentation on final roof covering, gutters, downspouts, exterior wall surfaces, entry and garage door surfaces, balcony deck coating and

railings. Buildings include those with residents and clubhouses, pool houses, recreation centers, etc. (Level 2)

Includes two site visits: The first site visit documents building and common area conditions and identifies any builder deferred maintenance or lingering construction issues. A written report of these deficiencies will be provided. Second site visit only documents correction of all items included in the written deficiencies report and gathers any additional information required to complete written report. An HOA Final Report will be issued following the second visit.

EXHIBIT 9.

GRANDFATHERED FIELD SERVICE PROVIDERS

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Arizona

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QUALITY
BUILT

PERFECTING THE
ART AND SCIENCE
OF QUALITY IN
HOME BUILDING®

[HOME](#)

[THE QB TEAM](#)



THE HISTORY OF QUALITY BUILT®: FROM LITIGATION TO PROACTIVE SERVICES

The Quality Built® program was founded in 1994 on a broad skill set of litigation experience that includes an impressive and varied list of projects. A background of more than 2,000 cases has encompassed investigations of hundreds of diverse building performance and product failure outcomes. The lessons learned from analyzing and repairing these projects have formed the basis of the Quality Built® knowledge database, which is used to evaluate builder quality and eliminate defects.

A Systems Approach to Quality

Quality Built® is a systems approach to quality, founded on the principles of **Total Quality Management (TQM)** models that have proven so successful in manufacturing and automotive industry, and geared specifically to the needs and challenges of homebuilders. Our analysis tools show you critical progress, step-by-step, month-by-month.

By using our Knowledge Base checklist, **Quality Built®** consultants focus on a hierarchy of construction risk, based on job phasing, job complexity and past performance. Our software tracks each and every checkpoint to ensure accurate data on demand and confirms that questioned items are positively addressed. You can receive statistics on the most common deficiencies discovered, with easy-to-read reports that highlight the benefits of your efforts. By getting positive closure on



Quality Built® is innovative and requires a different mindset to manage risk. We have found through experience that inspection alone is not the answer, but coupled with unbiased and courteous training, significant quality improvements can be achieved. Embracing this quality program can be the most cost-saving, moneymaking, problem-solving measure you will ever employ.

Quite simply, there is no other quality assurance or risk management system available to builders that has been formed from investigating thousands of building failures, litigation cases and experience in the forensic building-performance arena. Only **Quality Built®** gives you this incredible level of experience and focus to improve the important, high-risk components of home building.

The Best Builder's Bet for Increasing Profits, Managing Risk

Are **Quality Built®** systems going to save you money? You bet. Our statistics show that **Quality Built®** training, inspection and data analysis provide a substantial return on investment to the builder, resulting in significant risk reduction, reduced material usage and waste, and significant improvements to morale and customer satisfaction.

Since 1994, more than 500 builder projects covered by our **Quality Built®** program have been completed, totaling over 90,000 units. Current risk calculations show that incorporating the **Quality Built®** system has saved builders and insurers more than \$1 billion in risk, eliminating thousands of costly defects that plague builders and homeowners.

Your investment in the QB system will yield homes that are safer, more durable, more energy-efficient and more profitable to your bottom line.

ABOUT QUALITY BUILT®

QB IN THE NEWS

CONTACT US

FOR IMMEDIATE RELEASE*March 06, 2007***QUALITY BUILT® ACHIEVES INDUSTRY-FIRST ISO CERTIFICATION**

San Diego , CA — In March 2007, Quality Built®, a San Diego-based third-party consulting firm, was the first such organization to receive ISO-9001:2000 registration of its quality assurance management system after a year of intense compliance training by its in-house quality management team.

The International Organization for Standardization (ISO) is an internationally recognized standards-setting body comprised of 158 member countries around the globe. Quality Built, a quality-assurance consulting firm that provides services for developers and builders, is the largest such firm in the U.S., with more than 1,700 active construction projects in 28 states.

"I am so proud of this achievement," stated Stan Luhr, Quality Built's CEO and founder. Getting ISO-certified in such a short time period is a testament to the great employees who worked miracles to absolutely nail this audit."

Receiving ISO certification of Quality Built's quality management system has been a 12-year dream of Beth Michaelis, Quality Built's president, who spear-headed the year-long compliance effort and worked closely with each department. "I work with multi-billion dollar builders across the country, and not one of them has achieved this goal. With Quality Built's assistance, that will change," she stated.

Unlike sophisticated manufacturers, government contractors, and European automakers, the U.S. homebuilding industry is conspicuously shy of certified companies. A search on public ISO websites turned up only four ISO-certified companies listed out of the more than 211,891 residential and commercial builders in the United States, according to the U.S. Census Bureau, 2002 Economic Census.

3 captures

27 Jun 07 - 29 Sep 08

Quality Built's field staff utilize innovative "ruggedized" computers to track everything from foundation rebar to finishes on a project. The electronic data and digital photographs taken during construction provide builders and their insurers with important information to improve construction and deliver higher quality homes. In 2006, Quality Built collected over 12 million quality checkpoints and tallied over \$1.73 billion in corrected anomalies on 75,359 homes.

The service of delivering quality assurance on a jobsite and then creating policies and procedures to deliver consistent quality complicated the company's ISO certification. Delivering a quality assurance system is hard enough, let alone having to verify the performance and metrics necessary to deliver and audit that quality. Quality Built managed to do both, and in a short time frame compared to other companies attempting to become ISO registered.

Mark Brock-Farrington, Quality Built's director of Quality Assurance, championed the ISO effort with the full support of Quality Built's executives. Brock-Farrington utilized his extensive experience in creating quality systems for government contractors to assist Quality Built.

Brock-Farrington retained National Quality Assurance (NQA) to conduct the independent audits of the company. NQA is known internationally as a premier provider of management support services, and is one of the largest quality registrars in existence, having registered over 15,000 world-class quality management systems. NQA clients include NASA, Boeing, Caterpillar, Raytheon, Lockheed Martin and others. "I was confident that we would pass (the audit) on the first try," Brock-Farrington said after receiving word of passing. "I just never expected the auditor to have such high praise for our company and comparing our system to other ISO-compliant world-class organizations. That is a real honor. I am most proud of the efforts of my dedicated team."

According to Michaelis, Quality Built's next focus is to assist its more than 2,000 builder clients with their own ISO certification programs. She stated, "I believe so much that ISO helps companies improve their consistency and achieve great results because they have defined processes that can be measured. Quality is all about knowing what is right for the customer, delivering consistency and improving customer satisfaction every day. Our industry needs that."

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3 captures

27 Jun 07 - 29 Sep 08

largest homebuilders, have relied on Quality Built for reducing construction risk. Residential, commercial and high-rise builders and developers rely on Quality Built's patent-pending technologies, including proprietary risk capture and tracking software, to eliminate more than \$1 billion in construction defect risk and improve the safety, comfort and durability of housing.

For further information, please contact:

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ABOUT QUALITY BUILT®

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QB IN THE NEWS


 QUALITY
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 PERFECTING THE
 ART AND SCIENCE
 OF QUALITY IN
 HOME BUILDING®
FOR IMMEDIATE RELEASE*March 5, 2008***BACK****The Auditor Gets Audited, and Scores High Marks in First Annual ISO Review**

San Diego , CA — "A third-party auditing firm has just audited the nation's leading construction auditing firm, and gave highest marks to Quality Built® during their first annual ISO review," said a company spokesperson.

Quality Built® focuses on helping builders achieve higher quality and elimination of risk, and is the only such firm in the nation to achieve the coveted international registration ISO 9001:2000, which it received in February 2007. "Our auditor was impressed by the depth of our quality processes and corrective actions, and as he dug deeper and deeper he became more impressed," said Mark Brock- Farrington, Quality Built's Director of Quality Assurance, who manages the company's internal and external auditing processes. "He found zero minor and zero major conditions, essentially giving us a perfect score."

The International Organization for Standardization (ISO) is an internationally recognized standards-setting body comprised of 158 member countries around the globe. Quality Built is the only registered QA firm in the U.S. that focuses on builder quality. Of the more than 230,000 builders in the U.S., only four builders have attained ISO registration. Companies are monitored by third-party registered auditing firms who check a company's compliance to the international standard.

Construction quality has become more popular in recent times, primarily due to the insurance industry changing its underwriting guidelines and embracing builders who can prove their quality practices. In the past, builders were grouped together and shared similar risk profiles and bad builders often received insurance similar to builders who could prove their quality systems were superior. Today, large insurers such as Zurich North American Insurance and Arch Insurance embrace and promote quality assurance metrics, which has had an impact in the industry over the past several years.

Statistics compiled by the Insurance Information Institute revealed the property-casualty insurance industry projected a \$31.2 billion underwriting profit in 2007, the largest ever. Analysts believe profits were high due to a light hurricane season, but quality experts believe that the construction industry is turning itself around and producing homes with fewer defects, reminiscent of the US auto industry in the 1980's. Statistics show the insurance industry suffered losses in many other years where catastrophes were light, furthering supporting quality revolution being responsible for reduced claims.

Data released by Quality Built on 75,359 homes built in 2006 showed its client builders eliminated more than \$1.73 billion in construction defect risk and residual costs, according to its published study. Quality Built collected nearly 12 million quality "checkpoints" that year, along with 2.5 million digital photos to verify quality assurance for its clients. Quality Built's system is unique in that good construction quality is measured along with anomalies. The value is calculated from the estimated cost to repair a known deficiency and includes underwriting costs typically paid in litigation. Quality Built's auditing program measures a builder or trade contractor's performance and compliance to industry standards, and ranks builders from one to five, with five being the highest achievable level. To date, only two builders have achieved the highest level, with most

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"It's ironic that we are an auditing company that must get audited," said Stan Luhr, Quality Built's founder and CEO. "But having ISO registration as our core culture sets us apart and gives us the credibility to practice what we preach." Luhr added that Zurich is one such insurance company who has adopted ISO, with other insurers and builders likely to follow. For builders, Luhr believes it will be just a matter of time as they see how profitable it is to have a culture for quality driving their entire business.

Obtaining ISO registration was a 12-year plan for the company's President and CFO Beth Michaelis, who appointed Mark Brock-Farrington to focus the company into a process-driven model in 2005. Their next focus is to help builders become more efficient using Quality Built's methods. "I hope we can get builders to understand the importance of this registration what it does for builders and how they can truly become more efficient and profitable," said Michaelis. "We need this more than ever in today's tough builder economy."

Quality Built's services include jobsite inspection of residential and high-rise developments, utilizing three patent-pending technologies to identify problems that must be corrected to improve quality. The company also innovated a builder risk-audit program that is used by leading insurance companies to judge builder construction quality and provides a baseline from which to improve. Quality Built's field staff utilize innovative ruggedized computers to track everything from foundation rebar to finishes on a project. The electronic data and digital photographs taken during construction provide builders and their insurers with important information to improve construction and deliver higher quality homes.

"It's a new wave for the construction industry, to embrace true quality metrics and justify that it is worth it." Luhr added, "Everyone sleeps well at night when quality systems are in place, and that gives me encouragement that this is good for our industry."

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About Quality Built

Quality Built® is the largest provider of quality assurance services in the nation, operating in 28 states and serving over 170,000 units in production. More than 2,000 builders, including 17 of the 20 largest homebuilders, have relied on Quality Built for reducing construction risk. In 2006, Quality Built consultants gathered 12 million quality checkpoints and 2.27 million digital photos on 75,359 new homes. Quality Built has received publication of three U.S. patents on its processes and achieved ISO 9001:2000 registration in February—the first of its kind in the U.S. for such a firm. More information may be obtained at www.qualitybuilt.com.

For further information, please contact:

Marketing Department.....Tel: 800-547-5125.....Email:
marketing@qualitybuilt.com

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EXHIBIT C

EMPLOYMENT AGREEMENT

This employment agreement (this "Agreement"), dated _____, is between Quality Built, LLC, a Delaware limited liability company (the "Employer"), and [Stan Luhr] [Elizabeth Michaelis] (the "Employee").

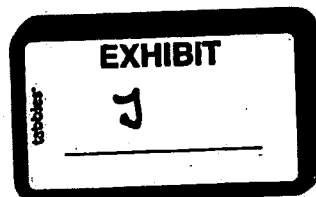
In consideration of the Employee's employment with the Employer and other consideration, as set forth below in the mutual promises and conditions in this Agreement, it is agreed as follows:

1. **Effective Date.** This Agreement will become effective on the date this Agreement is signed by an authorized representative of the Employer. The Employee's start date for employment will be _____, 2010.
2. **At-Will Employment.** The parties agree that the Employee's employment with the Employer under this Agreement is "at will." This means that there is no specified period of employment, and that either the Employee or the Employer may terminate the Employee's employment with the Employer at any time, without notice, and with or without good cause. The at-will nature of this employment relationship may not be modified or altered in any way except by a written agreement that clearly and expressly specifies the intent to do so and is signed by the Employee and an authorized representative of the Employer. The granting of raises, bonuses, or changes to job titles or job descriptions will not in any way affect the characterization of the Employee's employment with the Employer as being "at will."
3. **Employee's Position.** The Employee will initially hold the position of [Stan Luhr: Chief Technical Officer/Principal] [Elizabeth Michaelis: Executive President] of the Employer. The Employer may change the position or job description of the Employee from time to time, in the sole discretion of the Employer.
4. **Compensation.** The Employee's initial annual base salary shall be [Stan Luhr: \$87,500] [Elizabeth Michaelis: \$87,500], payable in accordance with the Employer's customary payroll procedures. The Employee's base salary shall be prorated for any partial period during the term of the Employee's employment with the Employer (the "Employment Term").
5. **Equity Ownership.** As soon as reasonably practicable following the date hereof, the Employee shall be granted restricted common equity of the Employer ("Common Equity") representing 5.00% of the Common Equity outstanding on a fully diluted basis as of the date hereof (the "Common Grant"). The Common Grant shall not be subject to a vesting schedule but shall be subject to customary forfeiture and repurchase provisions and restrictive covenants. The Employee shall be entitled to preemptive rights to purchase his or her pro rata percentage of any future equity issuances of the Employer at the same price and terms as offered to other equityholders of the Employer. Notwithstanding the foregoing, the Common Equity shall be subject to the terms and conditions set forth in the Employer's limited liability company agreement, as it may be amended from time to time, and a common grant agreement to be entered into between the Employee and the Employer.
6. **Employee Benefits.** While the Employee is employed by the Employer, the Employee shall be entitled to participate in all other Employer benefit plans, policies and programs (subject to the terms and conditions thereof) generally made available to the Employer's employees when and as the Employee becomes eligible for them. The Employer reserves the right to modify, suspend or discontinue any and all of such benefit plans.

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policies, and programs at any time without notice to or recourse by the Employee, so long as such action is taken generally with respect to other similarly situated employees.

7. **Severance.** Subject to the Employee's continued compliance with Sections 8, 9 and 10 hereof, if the Employee suffers a "Termination Without Cause" (as defined below), the Employee shall be entitled to receive an amount equal to (i) in the event the Termination Without Cause occurs within one (1) year of the date of this Agreement, the Employee's base salary as in effect at the time of the Termination Without Cause through to the first anniversary of the date of this Agreement, or (ii) in the event the Termination Without Cause occurs following one (1) year after the date of this Agreement, sixty (60) days of the Employee's base salary as in effect at the time of the Termination Without Cause (the "Severance Amount"), provided that the Employee delivers to the Employer a fully effective and irrevocable general release of claims (in a form reasonably acceptable to the Employer) within sixty (60) days following such Termination Without Cause (the "Release"). Subject to this Section 7 and Section 18, the Severance Amount shall be payable to the Employee in cash in substantially equal installments over a period of six (6) months (or two (2) months in the case of the Severance Amount being sixty (60) days of the Employee's base salary) commencing on the next regular pay day but in any event no later than the sixtieth (60th) day following such Termination Without Cause in accordance with the Employer's customary payroll procedures (the period commencing on the date of the Termination Without Cause and ending on the date the last Severance Amount installment payment is due hereunder, the "Severance Period"). For purposes of this Agreement, a "Termination Without Cause" shall mean the Employer's voluntary termination of the Employee's employment for any reason other than for "Cause" (as defined below) or as a result of the Employee's death or "Disability" (as defined below). For the avoidance of doubt, (i) a "Termination Without Cause" for purposes of this Agreement shall not include the Employee's voluntary resignation or retirement, or the Employee's termination of employment as a result of the Employee's death or Disability, and (ii) if the Employee's employment with the Employer terminates for any reason other than as a result of a Termination Without Cause, the Employer shall have no obligation to pay the Employee the Severance Amount hereunder. For purposes of this Agreement, "Cause" shall mean: (i) the Employee's refusal to follow lawful directions within the scope of the Employee's duties or the Employee's failure to perform the Employee's duties (other than by reason of physical or mental illness); (ii) the Employee's conviction of (or plea of *nolo contendere* or guilty to) a felony (other than a traffic violation); (iii) the Employee's commission of acts of dishonesty, misappropriation, gross neglect or fraud in connection with the Employee's position, duties or responsibilities hereunder; (iv) any breach by the Employee of any code of conduct, code of ethics or other written policy of the Employer; (v) any breach of fiduciary duty or responsibility by the Employee to the Employer; or (vi) any breach of the Employee's obligations under this Agreement. For purposes of this Agreement, "Disability" shall mean the Employee's physical or mental incapacity which prevents the Employee from performing the Employee's duties and responsibilities as determined by the Employer. If at any time during the Severance Period the Employer determines that the Employee has failed to comply with the Employee's obligations under Section 8, 9 or 10 hereof, the Employer's obligation to pay the Employee any further installments of the Severance Amount shall immediately cease. Except as provided in this Section 7, following termination of the Employee's employment with the Employer for any reason, the Employer shall have no further obligation to make any further payments or to provide any further benefits to the Employee (other than to pay the Employee any accrued but unpaid base salary through the date of termination and any other payments or benefits the Employee may be entitled to receive under the Employer's benefit plans, policies and programs in accordance with and subject to the terms of such benefit plans, policies and programs).
8. **No Conflict of Interest or Competition During Employment.** During the Employment Term, the Employee shall devote his or her full business time, energy, and ability

exclusively to the business and interests of the Employer, and shall not, without the Employer's prior written consent, render to others services of any kind for compensation, or engage in any other business activity that would materially interfere with the performance of the Employee's duties under this Agreement or create a conflict of interest for the Employee. [Stan Luhr Only: Nothing contained herein shall prevent the Employee from continuing to pursue his forensic business in existence as of the date of this Agreement, but only to the extent that such activities do not interfere with his duties to the Employer.] During the Employment Term and thereafter during the Severance Period, if any, plus for a period of one (1) year following the termination of the Employment Term, the Employee shall not, directly or indirectly, whether as partner, employee, creditor, shareholder, independent contractor, consultant, or otherwise, promote, participate, or engage in any activity or other business competitive with the Employer's business. During the Employment Term, the Employee agrees to promptly disclose to the Employer any business opportunity which is presented to the Employee and which is of a similar nature to the type of business the Employer is engaged or is considering engaging in at some point in the future.

9. **Non-Solicitation of Customers and Suppliers.** During the Severance Period, if any, plus for a period of one (1) year following the termination of the Employment Term, Employee agrees not to directly or indirectly, either alone or in concert with others, solicit, entice, or in any way divert any of the Employer's customers or suppliers to do business with any business entity in competition with the Employer.
10. **Non-Solicitation of Employees/Co-Workers.** During the Severance Period, if any, plus for a period of one (1) year following the termination of the Employment Term, the Employee agrees not to directly or indirectly, either alone or in concert with others, solicit or entice any other employee of the Employer to leave the Employer in order to work for anyone or any entity in competition with the Employer.
11. **Protection of Trade Secrets.** The Employee recognizes that the Employer is engaged in a continuous program of business development and operations and that information the Employee gains during the course of his or her employment has significant value to the Employer. The Employee understands that all information is to be held confidentially, and the Employee is responsible for taking steps to ensure information in the Employee's possession is protected from disclosure to those who are not employed by the Employer. The Employee also understands that certain items of confidential information are "trade secrets" as defined under California law (Civil Code section 3426.1 *et seq.*) and have significant economic value to the Employer. These trade secrets include, but are not limited to, the following categories of information: customer lists and specifications, ongoing business development projects and plans, software applications and modifications, forms, business models, marketing and sales strategies, strategies and initiatives regarding other affiliated entities, tracking and monitoring systems, databases containing contractor information, supplier lists, financial information about the Employer's company or affiliated companies, and other designs, processes, and techniques in use by the Employer. During the Employment Term and at all times after the Employment Term, the Employee agrees to keep such trade secrets in the strictest confidence and take all necessary measures to safeguard such trade secrets from disclosure, even after the Employment Term under this Agreement has ended. The Employee agrees not to disclose, use, or induce or assist anyone else to disclose, use, or misappropriate these trade secrets without the Employer's prior approval in writing, except as may be necessary in communications with other employees of the Employer during the Employment Term and within the course and scope of the Employee's employment with the Employer. The Employee agrees to promptly advise the Employer of any knowledge that he or she has of any unauthorized release or use of trade secret information.

12. **Returning Employer's Documents and Property Upon Termination.** Upon termination of the Employment Term, the Employee agrees to immediately deliver to the Employer all originals, copies, and reproductions of documents generated or possessed by the Employee in his or her capacity as an employee of the Employer, as well as all equipment, tools, cell phones, laptop computers, personal digital assistants, pagers, other physical property of the Employer, computer-related hardware, software, data, passwords or other electronically stored information.
13. **Employer's Ownership of Intellectual Property.** All processes, inventions, patents, copyrights, trademarks, and other intangible rights that may be conceived or developed by the Employee, either alone or with others, during the Employment Term, whether or not conceived or developed during the Employee's working hours, and with respect to which the equipment, supplies, facilities, or trade secret information of the Employer was used, or that relate at the time of conception or reduction to practice of the invention to the business of the Employer or to the Employer's actual or demonstrably anticipated research and development, or that result from any work performed by the Employee for the Employer, shall be the sole property of the Employer. [Stan Luhr Only: Notwithstanding the foregoing, Employee shall be permitted to develop inventions, patents and other intellectual property which are not competitive with any of the activities engaged in by the Employer during his normal course of business as a forensic consultant as permitted hereunder, to the extent his duties so require, and such development shall not be part of this Agreement.] The Employee shall disclose to the Employer all inventions conceived during the Employment Term, whether or not the property of the Employer under the terms of the preceding sentence, provided that such disclosure shall be received by the Employer in confidence. The Employee shall execute all documents, including patent applications and assignments, required by the Employer to establish the Employer's rights under this Section 13.
14. [Stan Luhr Only: Patents. Concurrent with the execution of this Agreement and for no additional consideration the Employee shall and does hereby assign to the Employer, and the Employee shall execute such further documents as requested by the Employer to evidence such assignment, all rights, title and interest to the following published patents: SYSTEMS AND METHODS FOR SELECTING AND PRIORITIZING CONSTRUCTION CHECKPOINTS (US Patent Application No. 10/900,734; Filed: July 28, 2004); BUILDER RISK ASSESSMENT SYSTEM (US Patent Application No. 10/802,129; Filed: March 16, 2004); and SYSTEMS AND METHODS FOR TRACKING COMPONENT-RELATED INFORMATION ASSOCIATED WITH BUILDINGS (US Patent Application No. 11/198,579; Filed: August 5, 2005) (collectively "Patents").]
15. **Employee's Promise that Employment Does not Breach any Other Agreement.** The Employee represents and warrants that his or her employment with the Employer does not and will not breach any agreement to keep in confidence proprietary information acquired by the Employee in confidence or in trust prior to the date hereof. The Employee has not brought and will not bring to the Employer, or use in employment, any proprietary material or trade secrets of a former employer (which term, for purposes of this Agreement, shall include persons, firms, corporations, and other entities for which the Employee has acted as an independent contractor or consultant) that are not generally available to the public, unless the Employee first obtains express written authorization from any such former employer for their possession and use.
16. **Injunctive Relief.** It is agreed that irreparable injury could occur from violation of terms of this Agreement. The parties to this Agreement shall be entitled, in addition to damages and other remedies provided by law, to an injunction or other equitable remedy in the event this Agreement is breached.

17. **No Waiver Unless In Writing.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver by the Employer of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
18. **Entire Agreement.** This Agreement contains the entire Agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between them, including all prior employment agreements, whether or not fully performed by the Employee before the date of this Agreement. No oral modifications, express or implied, may alter or vary the terms of this Agreement. This Agreement may only be amended by a writing signed by the Employee and an authorized representative of the Employer. Any representations contrary to this Agreement, express or implied, written or oral, are hereby disclaimed.
19. **Section 409A.** All provisions of this Agreement providing for the payment of "nonqualified deferred compensation" subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the rules, guidance and regulations thereunder (collectively, "Section 409A") shall be interpreted to comply with Section 409A. Neither party individually or in combination may accelerate or defer any such deferred payment, except in compliance with this Agreement and Section 409A, and no amount shall be paid prior to the earliest date on which it is permitted to be paid under this Agreement and Section 409A. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment that are subject to Section 409A unless such termination is also a "separation from service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment" or like terms shall mean "separation from service." In the event that the Employee is deemed on the date of termination to be a "specified employee" within the meaning of that term under Section 409A, then with regard to any payment or the provision of any benefit that is "nonqualified deferred compensation" as defined under Section 409A payable on account of a "separation from service," payment shall be made no earlier than the earlier of (a) the first day after six (6) months following such termination of employment, or (b) the Employee's death. Any payments delayed by reason of the prior sentence shall be caught up and paid in a single lump sum on the date indicated by the previous sentence. Notwithstanding the foregoing, any installments of the Severance Amount that are exempt from coverage under Section 409A pursuant to the short-term deferral exception in Treas. Reg. §1.409A-1(b)(4) or the separation pay exception in Treas. Reg. §1.409A-1(b)(9)(iii) shall not be subject to such six (6)-month delay and shall be payable in accordance with Section 7. For purposes of Section 409A, the Employee's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. In no event whatsoever shall the Employer be liable for any additional tax, interest or penalty that may be imposed on the Employee as a result of Section 409A or any damages for failing to comply with Section 409A. Whenever a payment under this Agreement may be paid within a specified period, the actual date of payment within the specified period shall be within the Employer's sole discretion. Any amounts payable hereunder that satisfy the short-term deferral exception in Treas. Reg. §1.409A-1(b)(4) or the separation pay exception in Treas. Reg. §1.409A-1(b)(9)(iii) are intended not to be subject to Section 409A.
20. **Withholding.** The Employer may withhold from any and all amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

21. **Choice of Law.** The formation, construction, and performance of this Agreement shall be construed in accordance with the laws of California and the forum for any legal action or proceeding shall be San Diego County.
22. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
23. **Attorney's Fees.** In any action, proceeding or arbitration between the parties hereto arising out of this Agreement, or the performance thereof, the non-prevailing party shall pay all reasonable attorney's fees and costs of the prevailing party in addition to any other relief to which such party may be entitled.
24. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.
25. **Section Headings.** The section headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement.

EMPLOYEE

EMPLOYER

[Stan Luhr] [Elizabeth Michaels]

By:
Title:

Dated: _____

Dated: _____

B1 (Official Form 1) (1/08)

United States Bankruptcy Court Southern District of California		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): <u>Qualitybuilt.com, a California corporation</u>		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): <u>None</u>		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): <u>EIN: 33-0864693</u>		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State) <u>15330 Ave of Science</u> <u>San Diego, CA</u>		Street Address of Joint Debtor (No. and Street, City, and State)
ZIPCODE <u>92128</u>		ZIPCODE
County of Residence or of the Principal Place of Business: <u>San Diego</u>		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):
ZIPCODE		ZIPCODE
Location of Principal Assets of Business Debtor (if different from street address above):		ZIPCODE
Type of Debtor (Form of Organization) (Check one box) ☐ Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> ☒ Corporation (includes LLC and LLP) ☐ Partnership ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below.) 	Nature of Business (Check one box) ☐ Health Care Business ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) ☐ Railroad ☐ Stockbroker ☐ Commodity Broker ☐ Clearing Bank ☒ Other Tax-Exempt Entity (Check box, if applicable) ☐ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code)	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) ☐ Chapter 7 ☐ Chapter 9 ☒ Chapter 11 ☐ Chapter 12 ☐ Chapter 13 ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding Nature of Debts (Check one box) ☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." ☒ Debts are primarily business debts
Filing Fee (Check one box) ☒ Full Filing Fee attached ☐ Filing Fee to be paid in installments (Applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3A. ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		Check one box: Chapter 11 Debtors ☐ Debtor is a small business as defined in 11 U.S.C. § 101(51D) ☒ Debtor is not a small business as defined in 11 U.S.C. § 101(51D) Check if: ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,190,000 Check all applicable boxes ☐ A plan is being filed with this petition. ☐ Acceptances of the plan were solicited prepetition from one or more classes, in accordance with 11 U.S.C. § 1126(b).
Statistical/Administrative Information ☒ Debtor estimates that funds will be available for distribution to unsecured creditors. ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors ☐ 1-49 ☐ 50-99 ☒ 100-199 ☐ 200-999 ☐ 1000-5000 ☐ 5,001-10,000 ☐ 10,001-25,000 ☐ 25,001-50,000 ☐ 50,001-100,000 ☐ Over 100,000		
Estimated Assets ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☒ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☐ More than \$1 billion		
Estimated Liabilities ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☒ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☐ More than \$1 billion		

EXHIBIT

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Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): Qualitybuilt.com, a California corporation	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)			
Location Where Filed: NONE	Case Number:	Date Filed:	
Location Where Filed: N.A.	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: NONE	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11) ☐ Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. § 342(b). X _____ Signature of Attorney for Debtor(s) Date	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? ☐ Yes, and Exhibit C is attached and made a part of this petition. ☒ No			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) ☐ Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: ☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box) ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. ☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes) ☐ Landlord has a judgment for possession of debtor's residence. (If box checked, complete the following.) _____ (Name of landlord that obtained judgment) _____ (Address of landlord) ☐ Debtor claims that under applicable non bankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and ☐ Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. ☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(1)).			

BI (Official Form 1) (1/08)**Page 3****Voluntary Petition***(This page must be completed and filed in every case)*

Name of Debtor(s):

Qualitybuilt.com, a California corporation

Signatures**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Debtor

X

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐

I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by § 1515 of title 11 are attached.

☐

Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X

(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

(Date)

Signature of Attorney***X**

/s/ L. Scott Keehn

Signature of Attorney for Debtor(s)

L. SCOTT KEEHN 61691

Printed Name of Attorney for Debtor(s)

Keehn & Associates, APC

Firm Name

402 W. Broadway, Suite 1210

Address

San Diego, CA 92101**(619) 400-2200**

Telephone Number

08/14/09

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

/s/ Elizabeth R. Michaelis

Signature of Authorized Individual

ELIZABETH R. MICHAELIS

Printed Name of Authorized Individual

Secretary

Title of Authorized Individual

08/14/09

Date

Signature of Non-Attorney Petition Preparer

I declare under penalty of perjury that: 1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, 2) I prepared this document for compensation, and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. § 110(b), 110(h), and 342(b); and, 3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security Number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

CERTIFICATE OF SECRETARY

In accordance with and pursuant to the provisions of Section 314 of the California Corporations Code, I certify that I am the duly qualified and acting Secretary of **QUALITYBUILT.COM**, a duly organized and existing California corporation (the "Corporation"). The attached memorandum is a true copy of resolutions duly adopted by the Board of Directors of such Corporation by written action taken without a meeting in accordance with and pursuant to the provisions of Section 307(b) of the California Corporations Code.

Such resolutions are in conformity with the Articles of Incorporation and the Code of Regulations of the Corporation, have not been modified or revoked, and are now in full force and effect.

DATED: August 14, 2009

//s// Elizabeth R. Michaelis

ELIZABETH R. MICHAELIS, Secretary

117851/5456.01

**MEMORANDUM OF DIRECTORS ACTION
TAKEN WITHOUT A MEETING BY THE UNANIMOUS CONSENT
OF THE DIRECTORS OF QUALITYBUILT.COM,
A CALIFORNIA CORPORATION**

The undersigned, being one of the Directors of Qualitybuilt.com, a California Corporation (the "Corporation"), in accordance with and pursuant to the provisions of § 307(b) of the California Corporations Code, does hereby unanimously adopt the following resolutions on behalf of the Corporation, effective August 14, 2009:

BE IT RESOLVED, that it is in the best interest of this Corporation, its creditors, shareholders, and other interested parties, that this Corporation file a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of California;

RESOLVED FURTHER, that either Stanly R. Luhr, as President, or Elizabeth R. Michaelis, as Secretary, acting alone is hereby authorized in the name of, and on behalf of this Corporation, to execute, verify, and file the petition, schedules, and statement of affairs required by the Bankruptcy Code, together with such other documents, pleadings and other papers as may be necessary or proper in connection with the voluntary petition under Chapter 11 of the Bankruptcy Code and proceedings commenced thereby, and to execute and deliver, or file such further documents, pleadings, and papers, and to take such other and further actions as he or she may deem to be necessary or desirable in connection therewith; and,

RESOLVED FURTHER, that the Corporation intends to request that the Court appoint the firm of Kechn & Associates, APC as the general bankruptcy counsel to represent the Corporation in the Chapter 11 proceeding authorized by the resolutions previously adopted at this meeting.

Dated: August 14, 2009

//s// Elizabeth R. Michaelis

ELIZABETH R. MICHAELIS

Secretary

117852/5456.01

Case 09-12113-PB11 Filed 08/14/09 Doc 1 Pg. 6 of 89
UNITED STATES BANKRUPTCY COURT
Southern District of California

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

Chapter

11

List of Equity Security Holders

Holder of Security	Number Registered	Type of Interest
Luhr, Stanley R. 1091 Singing Ridge Road El Cajon, CA 92019	8,500.00	Shares of stock (50%)
Michaelis, Elizabeth R. 5672 Amaya Dr., #202 La Mesa, CA 91942	8,500.00	Shares of stock (50%)

UNITED STATES BANKRUPTCY COURT
Southern District of California

In re Qualitybuilt.com, a California corporation,
 Debtor

Case No. _____

Chapter 11

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	(5) <i>Amount of claim [if secured also state value of security]</i>
California Deposition Reporters P.O. Box 108 Covina, CA 91723	Accts Receivable PO Box 108 Covina, CA 91723 (800) 242-1996	Trade Debt		8,678.83
Premium Financing Specialists P.O. Box 100384 Pasadena, CA 91189-0384	Accts Receivable PO Box 100384 Pasadena, CA 91189-0384 (800) 541-2384	Trade Debt		9,513.81
Blue Shield of CA P.O. Box 629014 El Dorado Hills, CA 95762-9014	Accts Receivable PO Box 629014 El Dorado Hills, CA 95762-9014 (916) 350-7328	Trade Debt		9,922.58

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	(5) <i>Amount of claim (if secured also state value of security)</i>
Insight P.O. Box 78825 Phoenix, AZ 85062-8825	Accts Receivable PO Box 78825 Phoenix, AZ 85062-8825 (800) 934-4477	Trade Debt		11,405.37
American Express P.O. Box 3600001 Fort Lauderdale, FL 33336-0001	Accts Receivable P.O. Box 3600001 Fort Lauderdale, FL 33336-0001 (800) 528-2122	Trade Debt		12,000.00
Xerox Corporation PO Box 660501 Dallas, TX 75266-0501	Accts. Receivable PO Box 660501 Dallas, TX 75266-0501 (800) 822-2200	Trade Debt		12,380.30
AIG 22427 Network Place Chicago, IL 60673-1224	Accts Receivable 22427 Network Pl. Chicago, IL 60673-1224 (800) 645-2259	Trade Debt		12,764.00
Thorsnes Litigation Services 2550 Fifth Ave Ninth Fl San Diego, CA 92103	Erik Thorsnes 2550 Fifth Ave., 9th Fl. San Diego, CA 92103 (619) 233-2030	Attorneys Fees		15,183.50
Schwartz & Janzen, LLP 12100 Wilshire Blvd Ste 1125 Los Angeles, CA 90025-7117	Accts Receivable Schwartz & Janzen, LLP 12100 Wilshire Blvd Ste 1125 Los Angeles, CA 90025-7117 (310) 979-4090	Attorneys Fees		16,692.31
Science Building Partners, LLC & FAEC Holdings 382771, LLC, Tenants in Common 15330 Ave of Science San Diego, CA 92128	Stan Luhr & Elizabeth Michaelis 15330 Ave of Science San Diego, CA 92128 (800) 547-5125	Accrued Interest on Loan		19,661.54

(1) Name of creditor and complete mailing address including zip code	(2) Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor, familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contract, etc.	(4) Indicate if claim is contingent, unliquidated, disputed or subject to setoff	(5) Amount of claim [if secured also state value of security]
Riverwalk Square Dev (Safari Drive) 4725 N. Scottsdale Road #110 Scottsdale, AZ 85251	Mike Traylor Riverwalk Square Dev 4725 N. Scottsdale Road #110 Scottsdale, AZ 85251 (480) 994-1160	Refund of Pre-payment		26,600.00
Rhule Construction 15330 Avenue of Science San Diego, CA 92128	Stan Luhr Rhule Construction 15330 Ave of Science San Diego, CA 92128 (800) 547-5125	Trade Debt	Setoff	27,716.58
LECG, LLC 2000 Powell St., Ste 600 Emeryville, CA 94608	Accts Receivable 2000 Powell St., Ste. 600 Emeryville, CA 94608 (510) 985-6700	Trade Debt		32,400.55
Schor & Freeland 600 B Street, Ste 2200 San Diego, CA 92101	Cindy Freeland Schor & Freeland 600 B Street, Ste 2200 San Diego, CA 92101 (619) 906-2400	Attorneys Fees		37,090.84
Mid-Pacific Testing 94-547 Uk'e St., Ste 200 Waipahu, HI 96797	John Merriman 94-547 Uk'e St., Ste 200 Waipahu, HI 96797 (808) 676-2720	Trade Debt		49,722.31
Thompson Law Group 2550 Fifth Ave., Ste 600 San Diego, CA 92103	Kris Thompson Thompson Law Group 2550 Fifth Ave., Ste 600 San Diego, CA 92103 (619) 233-9100	Attorneys Fees	Disputed	79,444.03
Schor & Freeland 600 B Street, Ste 2200 San Diego, CA 92101	Cindy Freeland Schor & Freeland 600 B Street, Ste 2200 San Diego, CA 92101 (619) 906-2400	Attorneys Fees		104,680.63

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	(5) <i>Amount of claim [if secured also state value of security]</i>
Science Building Partners, LLC / FAEC Holdings 382771, LLC 15330 Ave of Science San Diego, CA 92128	Stan Luhr & Elizabeth Michaelis 15330 Ave of Science San Diego, CA 92128 (800) 547-5125	Business Loan		308,272.48
Science Building Partners, LLC / FAEC Holdings 382771, LLC 15330 Ave of Science San Diego, CA 92128	Stan Luhr & Elizabeth Michaelis 15330 Ave of Science San Diego, CA 92128 (800) 547-5125	Rent - Commercial Lease		469,781.38
Criterium Engineers 22 Monument Square, Ste 600 Portland, ME 04101	Herbert A. Mooney Criterium Engineers 22 Monument Square, Ste 600 Portland, ME 04101 (800) 242-1969	Arbitration Award	Disputed	3,658,098.23

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, [the president or other officer or an authorized agent of the corporation] named as debtor in this case, declare under penalty of perjury that I have read the foregoing LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS and that it is true and correct to the best of my information and belief.

Date 08/14/09

Signature /s/ Elizabeth R. Michaelis
ELIZABETH R. MICHAELIS,
Secretary

B6 Summary (Official Form 6 - Summary) (12/07)

United States Bankruptcy Court

Southern District of California

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

Chapter 11

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

AMOUNTS SCHEDULED

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	YES	1	\$ 0.00		
B - Personal Property	YES	3	\$ 2,114,539.30		
C - Property Claimed as exempt	YES	1			
D - Creditors Holding Secured Claims	YES	2		\$ 323,569.88	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	YES	12		\$ 231,663.82	
F - Creditors Holding Unsecured Nonpriority Claims	YES	17		\$ 6,361,643.64	
G - Executory Contracts and Unexpired Leases	YES	3			
H - Codebtors	YES	1			
I - Current Income of Individual Debtor(s)	NO	0			\$ 0.00
J - Current Expenditures of Individual Debtors(s)	NO	0			\$ 0.00
TOTAL		40	\$ 2,114,539.30	\$ 6,916,877.34	

United States Bankruptcy Court

Southern District of California

In re Qualitybuilt.com, a California corporation
Debtor

Case No. _____

Chapter 11

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☒ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$ N.A.
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$ N.A.
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	\$ N.A.
Student Loan Obligations (from Schedule F)	\$ N.A.
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$ N.A.
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$ N.A.
TOTAL	\$ N.A.

State the Following:

Average Income (from Schedule I, Line 16)	\$ N.A.
Average Expenses (from Schedule J, Line 18)	\$ N.A.
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	\$ N.A.

State the Following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		\$ N.A.
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	\$ N.A.	
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		\$ N.A.
4. Total from Schedule F		\$ N.A.
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		\$ N.A.

In re Qualitybuilt.com, a California corporation

Case No. _____

Debtor

(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C – Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
None				
Total			0.00	

(Report also on Summary of Schedules.)

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See. 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Checking Account (Account No. 2020021101) California Bank and Trust 1024 Graves Ave El Cajon, CA 92021		33,769.68
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, Pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			

In re Qualitybuilt.com, a California corporation
Debtor

Case No. _____
(If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.		Accounts Receivable		1,418,335.40
17. Alimony, maintenance, support, and property settlement to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owing debtor including tax refunds. Give particulars.		Judgment against West Coast Property Consultants, Inc. ("WCPC"), in San Diego Superior Court Case No. GIC 855108. Amount is \$1,760,735.51. Debtor has discounted this amount by 20% to estimate its market value because WCPC is a Chapter 11 DIP in Case No. 09-07742-PB11 (S.D. Cal.).		408,588.41
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate or a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights of setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.		Trademarks See Attachment B-22		16,000.00
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. §101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			

In re Qualitybuilt.com
United States Bankruptcy Court for the Southern District of California
Case No. _____

ATTACHMENT B-22

QUALITY BUILT TRADEMARKS

The following are Registered Trademarks:

FRAMER ID®
PERFECTING THE ART AND SCIENCE OF QUALITY IN HOME BUILDING®
QUALITY BUILT®
BUILDER I.D.®
QUALITYBUILT.COM®
Q® (design of a stylized letter Q in a rectangle)
QB BUILDER LINK®
QB CLOSURE LINK®
QB RAPID RESPONSE®
HOME ID®
QB LINK®
QB DAP®

The following are additional trademarks in use by Quality Built:

BUILDER RISK ASSESSMENT™
TECHNICAL PLAN REVIEW™
RESIDENT EXPERT PROGRAM™
PRODUCTLINK™
SAFETYLINK™
TRADELINK™
PERFECTING THE ART AND SCIENCE OF QUALITY IN CONSTRUCTION™

In re Qualitybuilt.com, a California corporation
 Debtor

Case No. _____
 (If known)

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.		Desks, chairs, file cabinets, bookshelves, security cameras, fitness equipment, etc. 15330 Ave of Science San Diego, CA 92128		47,528.32
29. Machinery, fixtures, equipment, and supplies used in business.		Computers, Servers, and Development Computers for Testing 15330 Ave of Science San Diego, CA 92128		154,813.12
		Diagnostic Testing Equipment 15330 Ave of Science San Diego, CA 92128		35,504.37
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize:	X			

0

continuation sheets attached

Total

\$ 2,114,539.30

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

B6C (Official Form 6C) (12/07)

In re Qualitybuilt.com, a California corporation

Case No. _____

Debtor

(If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPTDebtor claims the exemptions to which debtor is entitled under:
(Check one box)☐ 11 U.S.C. § 522(b)(2)☐ Check if debtor claims a homestead exemption that exceeds
\$136,875.☐ 11 U.S.C. § 522(b)(3)

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Not Applicable.			

B6D (Official Form 6D) (12/07)In re Qualitybuilt.com, a California corporation

Case No. _____

Debtor

(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 0190144-0001 California Bank & Trust 1024 Graves Ave. El Cajon, CA 92121		Incurred: 01/09/09 - 03/04/09 Lien: Line of Credit Security: Personal Guaranty by Stanley R. Luhr & Elizabeth R. Michaelis				250,000.00	0.00
		VALUE \$ 250,000.00					
ACCOUNT NO. 0194749400-001 Dolphin Capital 1720A Crete St. Moberly, MO 65270		Incurred: 11/04/04 Lien: Line of Credit Security: Personal Guaranty by Stanley R. Luhr & Elizabeth R. Michaelis				3,000.00	0.00
		VALUE \$ 18,200.00					
ACCOUNT NO. 0194749400-002 Dolphin Capital 1720A Crete St. Moberly, MO 65270		Incurred: 02/15/05 Lien: Line of Credit Security: Personal Guaranty by Stanley R. Luhr & Elizabeth R. Michaelis				3,500.00	0.00
		VALUE \$ 19,320.00					
Subtotal (Total of this page)						\$ 256,500.00	\$ 0.00
Total (Use only on last page)						\$	\$

1 continuation sheets attached

(Report also on
Summary of Schedules)

(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

ROA_00473

B6D (Official Form 6D) (12/07) – Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. N/A Elizabeth R. Michaelis 5672 Amaya Dr. #202 La Mesa, CA 91942		Incurred: 08/11/09 Lien: UCC Financing Statement Security: Accounts and Property of Qualitybuilt.com VALUE \$ 40,000.00				40,000.00	0.00
ACCOUNT NO. 033-8036734-003 Leaf Funding PO Box 644006 Cincinnati, OH 45264-4006		Incurred: 11/07/06 Lien: UCC Financing Statement Security: Lease Assigned - Original Lease with Ford Financial Elizabeth R. Michaelis noted as Personal Guarantor VALUE \$ 60,680.00				6,168.52	0.00
ACCOUNT NO. 518634 Microsoft Financing (CIT Technology Fin. Svcs) 23896 Network Place Chicago, IL 60673		Incurred: 02/09/06 Lien: Financing for computer hardware and consulting services Security: Secured by Microsoft Licenses VALUE \$ 628,436.95				20,299.17	0.00
ACCOUNT NO. 527103 Microsoft Financing (CIT Technology Fin. Svcs) 23896 Network Place Chicago, IL 60673		Incurred: 05/17/06 Lien: Financing for computer hardware and consulting services Security: Secured by Microsoft Licenses VALUE \$ 6,168.61				602.19	0.00
ACCOUNT NO.							
		VALUE \$					
Subtotal (s)						\$ 67,069.88	\$ 0.00
(Total(s) of this page)						\$ 323,569.88	\$ 0.00
(Use only on last page)							

Sheet no. 1 of 1 continuation sheets attached to
Schedule of Creditors Holding Secured Claims(Report also on
Summary of Schedules)
(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

ROA_00474

B6E (Official Form 6E) (12/07)In re Qualitybuilt.com, a California corporation
DebtorCase No. _____
(if known)**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed.R.Bankr.P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☒ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation
Debtor

Case No. _____
(if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,425* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☒ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

10
continuation sheets attached

ROA_00476

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Case No. _____

Debtor

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(4)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO. Bates, Charles 8544 Alpine Avenue La Mesa, CA 91941		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				2,454.38	2,454.38	0.00
ACCOUNT NO. Brown, Jeremy 1165 Fitzgerald Rd #d Simi Valle, CA 93065		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				1,201.20	1,201.20	0.00
ACCOUNT NO. Cooks, David 294 Spring Creek Rd Boulder Creek, CA 95006		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				938.84	938.84	0.00
ACCOUNT NO. Correa, Nancy 567 Trovita Court Escondido, CA 92027		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				2,526.70	2,526.70	0.00
Subtotal (Totals of this page)						\$ 7,121.12	\$ 7,121.12	\$ 0.00
Total (Use only on last page of the completed Schedule E.) Report also on the Summary of Schedules)						\$		
Totals (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)						\$	\$	\$

Sheet no. 1 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority Claims

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(4)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO. Giamanco, Rick P.O. Box 5780 Dillon, CO 80435		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				183.12	183.12	0.00
ACCOUNT NO. Gieske, Alan 17666 Azucar Way San Diego, CA 92127		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				1,455.62	1,455.62	0.00
ACCOUNT NO. Gray-Luhr, Jane 1091 Singing Ridge Rd El Cajon, CA 92019		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				355.39	355.39	0.00
ACCOUNT NO. Hill, Don 1681 Havenwood Drive Oceanside, CA 92056		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				1,081.88	1,081.88	0.00
Subtotal (Totals of this page)						\$ 3,076.01	\$ 3,076.01	\$ 0.00
Total (Use only on last page of the completed Schedule E.) Report also on the Summary of Schedules)						\$		
Totals (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)						\$	\$	\$

Sheet no. 2 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority Claims

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(4)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBETOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO.		Incurring: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off						
Hogge, Kelly 3368 Daley Center Dr San Diego, CA 92123						480.48	480.48	0.00
ACCOUNT NO.		Incurring: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off						
Kern, Remi 1500 Lakewood Ave #169 Modesto, CA 95355						337.26	337.26	0.00
ACCOUNT NO.		Incurring: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off						
Konechne, Ted 4657 Poppy Hills Dr Frisco, TX 75035						648.27	648.27	0.00
ACCOUNT NO.		Incurring: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off						
LaDow, Ken 870 Diamond Street #202 San Diego, CA 92109						2,021.25	2,021.25	0.00
Subtotal (Totals of this page)						\$ 3,487.26	\$ 3,487.26	\$ 0.00
Total (Use only on last page of the completed Schedule E.) Report also on the Summary of Schedules)						\$		
Totals (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)						\$	\$	\$

Sheet no. 3 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority Claims

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Case No. _____

Debtor

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(4)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above..)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO. Lewis, Michael 27620 Susan Beth Way Saugus, CA 91350		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				277.50	277.50	0.00
ACCOUNT NO. 9738 Luhr, Stanley R. 1091 Singing Ridge Rd. El Cajon, CA 92019		Incurred: 12/2008 - 05/2009 Consideration: Deferred Compensation - Unpaid Salary				95,538.42	10,950.00	84,588.42
ACCOUNT NO. Luhr, Stanley R. 1091 Singing Ridge Rd. El Cajon, CA 92019		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				6,737.50	6,737.50	0.00
ACCOUNT NO. Luminais, Michael 202 School Street Geneva, IL 60134		Consideration: Active Employee				Notice Only	Notice Only	Notice Only
Subtotal (Totals of this page)						\$ 102,553.42	\$ 17,965.00	\$ 84,588.42
Total (Use only on last page of the completed Schedule E.) Report also on the Summary of Schedules)						\$		
Totals (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)						\$	\$	\$

Sheet no: 4 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority Claims

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation.

Debtor

Case No. _____

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(4)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO. McPherson, Patrick 4192 Mission Inn Ave Riverside, CA 92501		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				1,093.09	1,093.09	0.00
ACCOUNT NO. 7440 Michaelis, Elizabeth R. 5672 Amaya Dr. #202 La Mesa, CA 91942		Incurred: 12/2008 - 05/2009 Consideration: Deferred Compensation - Unpaid Salary				91,980.42	10,950.00	81,030.42
ACCOUNT NO. Michaelis, Elizabeth R. 5672 Amaya Dr. #202 La Mesa, CA 91942		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				6,737.50	6,737.50	0.00
ACCOUNT NO. Michaelis, Garth 11768 S. Oakmond Rd South Jordan, UT 84095		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				3,850.00	3,850.00	0.00
Subtotal (Totals of this page)						\$ 103,661.01	\$ 22,630.59	\$ 81,030.42
Total (Use only on last page of the completed Schedule E.) Report also on the Summary of Schedules)						\$		
Totals (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)						\$	\$	\$

Sheet no. 5 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority Claims

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(4)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above..)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO. Molz, Chris P.O. Box 423 Clements, CA 95227		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				858.31	858.31	0.00
ACCOUNT NO. Monroe, Janet 44700 Via Lucido Temecula, CA 92592		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				808.41	808.41	0.00
ACCOUNT NO. Mozgovaya, Nadya 7222 S. Blackhawk St #204 Englewood, CO 80112		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				1,637.95	1,637.95	0.00
ACCOUNT NO. Murphy, Sheila 7715 El Cajon Blvd #1 La Mesa, CA 91942		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				1,761.08	1,761.08	0.00
Subtotal (Totals of this page)						\$ 5,065.75	\$ 5,065.75	\$ 0.00
Total (Use only on last page of the completed Schedule E.) Report also on the Summary of Schedules)						\$		
Totals (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)						\$	\$	\$

Sheet no. 6 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority Claims

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(4)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO.		Incurring: 02/01/09 - 08/01/09						
Myers, Trent 470 Chardonnay Court San Marcos, CA 92069		Consideration: Accrued Paid Time Off				775.24	775.24	0.00
ACCOUNT NO.		Incurring: 02/01/09 - 08/01/09						
Payne, Krista 9107 Clearlake Way Lakeside, CA 92040		Consideration: Accrued Paid Time Off				345.56	345.56	0.00
ACCOUNT NO.		Incurring: 02/01/09 - 08/01/09						
Reilly, Erin P.O. Box 501985 San Diego, CA 92150-1985		Consideration: Accrued Paid Time Off				132.30	132.30	0.00
ACCOUNT NO.		Incurring: 02/01/09 - 08/01/09						
Reimer-Highfill, Sandra 25188 Poderio Dr Ramona, CA 92065		Consideration: Accrued Paid Time Off				904.38	904.38	0.00
Subtotal						\$ 2,157.48	\$ 2,157.48	\$ 0.00
(Totals of this page)								
Total						\$		
(Use only on last page of the completed Schedule E.) Report also on the Summary of Schedules)								
Totals						\$	\$	\$
(Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)								

Sheet no. 7 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority Claims

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Case No. _____

Debtor

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(4)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO. Reynolds, Robert 17611 Hada Drive San Diego, CA 92127		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				640.45	640.45	0.00
ACCOUNT NO. Schoenherr, Daryl 2045 Celeste Ave Clovis, CA 93611		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				1,279.36	1,279.36	0.00
ACCOUNT NO. Slocum, Andrew 823 Almond Rd San Marcos, CA 92078		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				241.54	241.54	0.00
ACCOUNT NO. Smith, Clyde 13844 S. Belle Isis Herriman, UT 84096		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				1,061.06	1,061.06	0.00

Sheet no. 8 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority ClaimsSubtotal
(Totals of this page)

\$ 3,222.41 \$ 3,222.41 \$ 0.00

(Use only on last page of the completed
Schedule E.) Report also on the Summary
of Schedules)

Total

\$

Totals

(Use only on last page of the completed
Schedule E. If applicable, report also on
the Statistical Summary of Certain
Liabilities and Related Data.)

\$ \$ \$

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(4)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO. Taylor, Charles 10237 No. Nine Iron Oro Valley, AZ 85737		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				308.75	308.75	0.00
ACCOUNT NO. Wypiszynski, Angela 14566 Silla St Poway, CA 92064		Incurred: 02/01/09 - 08/01/09 Consideration: Accrued Paid Time Off				1,010.61	1,010.61	0.00
ACCOUNT NO. 								
ACCOUNT NO. 								

Sheet no. 9 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority ClaimsSubtotal
(Totals of this page)

\$ 1,319.36 \$ 1,319.36 \$ 0.00

Total
(Use only on last page of the completed
Schedule E.) Report also on the Summary
of Schedules)

\$ \$ \$

Totals
(Use only on last page of the completed
Schedule E. If applicable, report also on
the Statistical Summary of Certain
Liabilities and Related Data.)

\$ \$ \$

B6E (Official Form 6E) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet) Sec. 507(a)(8)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCOUNT NO.		Consideration: Taxes						
Franchise Tax Board P.O. Box 942857 Sacramento, CA 94257-0511						Notice Only	Notice Only	Notice Only
ACCOUNT NO.		Consideration: Taxes						
Internal Revenue Service 880 Front St. San Diego, CA 92101						Notice Only	Notice Only	Notice Only
ACCOUNT NO.		Consideration: Taxes						
San Diego County Tax Collector P.O. Box 129009 San Diego, CA 92112						Notice Only	Notice Only	Notice Only
ACCOUNT NO.		Consideration: Sales Tax						
State Board of Equalization 1350 Front St., Room 5047 San Diego, CA 92101-3698						Notice Only	Notice Only	Notice Only
Subtotal						\$ 0.00	\$	\$
(Totals of this page)						\$ 231,663.82		
Total						\$	\$ 66,044.98	\$165,618.84
(Use only on last page of the completed Schedule E.) Report also on the Summary of Schedules)								
Totals						\$	\$ 66,044.98	\$165,618.84
(Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)								

Sheet no. 10 of 10 continuation sheets attached to Schedule of
Creditors Holding Priority ClaimsSubtotal
(Totals of this page)Total
(Use only on last page of the completed
Schedule E.) Report also on the Summary
of Schedules)Totals
(Use only on last page of the completed
Schedule E. If applicable, report also on
the Statistical Summary of Certain
Liabilities and Related Data.)

B6F (Official Form 6F) (12/07)

In re Qualitybuilt.com, a California corporation
DebtorCase No. _____
(If known)**SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code; and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 00070-E89163 ADP, Inc 5355 Orangethrope Ave La Palma, CA 90623		Incurred: 5/22/2009 - pres Consideration: Timeclock Software				401.62
ACCOUNT NO. 1300115736199 / 6188883 ADT Security P.O. Box 371956 Pittsburgh, PA 15250-7956		Incurred: 5/9/2009 - pres Consideration: Security Monitoring				545.12
ACCOUNT NO. 1022414900 AIG 22427 Network Place Chicago, IL 60673-1224		Incurred: 6/1/2009 - pres Consideration: Workers Comp Insurance				12,764.00
ACCOUNT NO. N/A All County Fire Equip Corp 3163 Adams Avenue San Diego, CA 92116		Incurred: 7/14/2009 - pres Consideration: Building Maintenance				470.81
Subtotal						\$ 14,181.55
Total						\$

16 continuation sheets attached

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.)

ROA_00487

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. N/A AMC 500 S. Marschall Rd, Ste 205 Shakopee, MN 55379		Incurred: 5/15/2009 - pres Consideration: Pre-employment drug screening				38.95
ACCOUNT NO. 73-155-Y-00167-07 01 American Arbitration Assoc. 6795 North Palm Ave., 2nd Fl. Fresno, CA 93704		Incurred: 2/23/2009 - pres Consideration: Legal Services				8,025.00
ACCOUNT NO. 3782-721779-31002 American Express P.O. Box 3600001 Fort Lauderdale, FL 33336-0001		Incurred: 6/28/2009 - pres Consideration: Credit Card Debt (Unsecured) Travel expenses & misc expenses				12,000.00
ACCOUNT NO. 0022424071 Arrowhead P.O. Box 856158 Louisville, KY 40285-6158		Incurred: 5/21/2009 - pres Consideration: Equipment Rental				159.76
ACCOUNT NO. 858-613-1179 AT&T Payment Center Sacramento, CA 95887-0001		Incurred: 5/25/2009 - pres Consideration: Telephone Services				115.64
Sheet no. <u>1</u> of <u>16</u> continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal > \$ 20,339.35 Total > \$

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

ROA_00488

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation,

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 619-588-4911 AT&T Payment Center Sacramento, CA 95887-0001		Incurred: 5/26/2009 - pres Consideration: Telephone Services				53.62
ACCOUNT NO. 858-451-1022 AT&T Payment Center Sacramento, CA 95887-0001		Incurred: 6/16/2009 - pres Consideration: Telephone Services				346.82
ACCOUNT NO. 8309751864-00002 AT&T Advertising & Publishing P.O. Box 989046 West Sacramento, CA 95798-9046		Incurred: 4/25/2009 - pres Consideration: Yellow Pages Advertising				397.84
ACCOUNT NO. 876030443 AT&T Mobility P.O. Box 6463 Carol Stream, IL 60197-6463		Incurred: 3/19/2009 - pres Consideration: Cell Phone Service				799.93
ACCOUNT NO. 4334855 Blue Shield of CA P.O. Box 629014 El Dorado Hills, CA 95762-9014		Incurred: 7/1/2009 - pres Consideration: Health Insurance				9,922.58
Subtotal >						\$ 11,520.79
Total >						\$

Sheet no. 2 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00489

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. N/A Bruno Skorheim 9665 Chesapeake Dr #470 San Diego, CA 92123		Incurred: 6/1/2009 - pres Consideration: Tax Preparation Services				1,200.00
ACCOUNT NO. 11406 Business Commons at Southeast Commons Assoc P.O. Box 440020 Aurora, CO 80044-0020		Incurred: 5/1/2009 - pres Consideration: Association Fees				1,501.19
ACCOUNT NO. 73155 Y001-67 DEAR California Deposition Reporters P.O. Box 108 Covina, CA 91723		Incurred: 2/24/2009 - pres Consideration: Litigation Support Services				8,678.83
ACCOUNT NO. 8429-34359 Ceridian C3201 34th St South St. Petersburg, FL 33711		Incurred: 5/2/2009 - pres Consideration: COBRA Services				127.64
ACCOUNT NO. U16-17453-04-6 City of San Diego - Water Department Customer Services Section San Diego, CA 92187-00011		Incurred: 6/19/2009 - pres Consideration: Water Services				239.29
Subtotal >						\$ 11,746.95
Total >						\$

Sheet no. 3 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00490

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. N/A Criterium Engineers 22 Monument Square, Ste 600 Portland, ME 04101		Incurred: 07/31/05 - 03/07/07 Consideration: Independent Contractor		X		3,658,098.23
ACCOUNT NO. 5822-120172 Daniel Coker Horton & Bell 4400 Old Canton Rd., Ste 400 PO Box 1084 Jackson, MS 39215-1084		Incurred: 03/16/2009 - pres Consideration: Legal Services				2,443.30
ACCOUNT NO. GIC855108 Darla Kmety 220 West Broadway Dept. 47 San Diego, CA 92101		Incurred: 4/16/2009 - pres Consideration: Legal Services				7,214.27
ACCOUNT NO. BBR2371 Dollar Rent a Car Department 404 Tulsa, OK 74182		Incurred: 4/3/2009 - pres Consideration: Car Rental Services				1,000.00
ACCOUNT NO. N/A Douglas R. Anderson CPA 2550 Fifth Ave., Ste 637 San Diego, CA 92103		Incurred: 3/2/2009 - pres Consideration: Expert Witness				4,730.10
Subtotal >						\$ 3,673,485.90
Total >						\$

Sheet no. 4 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00491

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation
DebtorCase No. _____
(If known)**SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 16-AR 252066 Edco Disposal Corp 6670 Federal Blvd Lemon Grove, CA 91945		Incurred: 5/31/2009 - pres Consideration: Waste Management Services				402.07
ACCOUNT NO. 1314-9222-7 Fedex P.O. Box 7221 Pasadena, CA 91109-7321		Incurred: 5/22/2009 - pres Consideration: Delivery Services				1,400.00
ACCOUNT NO. 3701-7900-0 Fedex P.O. Box 7221 Pasadena, CA 91109-7321		Incurred: 6/5/2009 - pres Consideration: Delivery Services				600.00
ACCOUNT NO. Q59847 Genflex Roofing Systems 250 W. 96th Street, Ste. 150 Indianapolis, IN 46260		Incurred: 06/03/09 - pres Consideration: Repairs & Maint - Bldg				220.00
ACCOUNT NO. 77114001 Greco & Traficante P.O. Box 12670 San Diego, CA 92112		Incurred: 5/27/2009 - pres Consideration: Legal Services				1,590.80
Subtotal >						\$ 4,212.87
Total >						\$

Sheet no. 5 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00492

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation,
DebtorCase No. _____
(If known)**SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 6035322541653260 Home Depot Credit Services P.O. Box 9121 Des Moines, IA 50368-9121		Incurred: 4/1/2009 - pres Consideration: Building Repair Supplies				1,766.84
ACCOUNT NO. 10273554 Insight P.O. Box 78825 Phoenix, AZ 85062-8825		Incurred: 3/26/2009 - pres Consideration: Computer Equipment				11,405.37
ACCOUNT NO. 83913 Iron Mountain P.O. Box 601002 Pasadena, CA 91189-1002		Incurred: 4/30/2009 - pres Consideration: Offsite Storage Facility for Backups				1,415.28
ACCOUNT NO. N/A JAM Fire Protection Inc 9082 Clairmont Mesa Blvd San Diego, CA 92123		Incurred: 7/2/2009 - pres Consideration: Building Maint Services				195.00
ACCOUNT NO. N/A James Edward Engineering 9475 Double R Blvd., Ste 3 Reno, NV 89521		Incurred: 01/31/08 - present Consideration: Independent Contractor				7,994.35
Subtotal >						\$ 22,776.84
Total >						\$

Sheet no. 6 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00493

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. N/A Jan Pro Cleaning Systems 3377 Carmel Mountain Rd, Ste 200 San Diego, CA 92121		Incurred: 4/1/2009 - pres Consideration: Janitorial Services				585.00
ACCOUNT NO. 000255685-0001 Kaiser Foundation Health Plan File 5915 Los Angeles, CA 90074-5915		Incurred: 7/1/2009 - pres Consideration: Health Insurance				6,990.00
ACCOUNT NO. 000255685-0000 Kaiser Foundation Health Plan File 5915 Los Angeles, CA 90074-5915		Incurred: 7/1/2009 - pres Consideration: Health Insurance				7,724.00
ACCOUNT NO. QBUILT/ROS Knobbe Martens Olson & Bear LLP 2040 Main St., Fourteenth Fl. Irvine, CA 92614		Incurred: 3/16/2009 - pres Consideration: Legal Services		X		217.80
ACCOUNT NO. N/A Law Office of Matt Sumrow 4695 MacArthur Court, Ste 310 Newport Beach, CA 92660		Incurred: 3/10/2009 - pres Consideration: Legal Services				2,585.00
Subtotal						\$ 18,101.80
Total						\$

Sheet no. 7 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00494

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. qltbt-22413 LECG, LLC 2000 Powell St., Ste 600 Emeryville, CA 94608		Incurred: 10/2/2008 - pres Consideration: Expert Witness				32,400.55
ACCOUNT NO. 0099312860 Lexis Nexis Matthew Bender P.O. Box 7247-0178 Philadelphia, PA 75035		Incurred: 7/10/2009 - present Consideration: Reference Material				19.58
ACCOUNT NO. N/A Luhr, Stanley R. 1091 Singing Ridge Road El Cajon, CA 92019		Incurred: 10/05/06 - present Consideration: Accrued Interest on Note				180,006.33
ACCOUNT NO. N/A Luhr, Stanley R. 1091 Singing Ridge Road El Cajon, CA 92019		Incurred: 10/05/06 Consideration: Business Loan				703,579.48
ACCOUNT NO. KM05736509 MetLife Dental P.O. Box 804466 Kansas City, MO 64180-4466		Incurred: 6/15/2009 - pres Consideration: Health Insurance				3,020.27
Subtotal						\$ 919,026.21
Total						\$

Sheet no. 8 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00495

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. N/A Michael Luminais 202 School Street Geneva, IL 60134			Incurred: 8/1/2009 - present Consideration: Mileage, travel related expenses				40.54
ACCOUNT NO. N/A Michaelis, Elizabeth R. 5672 Amaya Dr., #202 La Mesa, CA 91942			Incurred: 10/03/06 - present Consideration: Accrued Interest on Note				95,064.25
ACCOUNT NO. Michaelis, Elizabeth R. 5672 Amaya Dr., #202 La Mesa, CA 91942			Incurred: 10/03/06 Consideration: Business Loan				354,942.57
ACCOUNT NO. N/A Mid-Pacific Testing 94-547 Uk'e St., Ste 200 Waipahu, HI 96797			Incurred: 01/31/07 - present Consideration: Independent Contractor				49,722.31
ACCOUNT NO. N/A Niddrie Fish and Buchanan LLP 750 B Street, Ste 2640 San Diego, CA 92101			Incurred: 3/19/2009 - pres Consideration: Legal Services				7,290.00
Sheet no. <u>9</u> of <u>16</u> continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims				Subtotal >		\$	507,059.67
				Total >		\$	

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00496

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation
DebtorCase No. _____
(If known)**SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 43730265 Office Depot P.O. Box 70025 Los Angeles, CA 90074-0025		Incurred: 4/2/2009 - pres Consideration: Office Supplies - Revolving Credit				407.51
ACCOUNT NO. 108789 Officia Imaging 7323 Engineer Road San Diego, CA 92111-1409		Incurred: 5/11/2009 - pres Consideration: Copier Maintenance				994.28
ACCOUNT NO. QUALITYBUILT Omni Controls 5309 Technology Drive Tampa, FL 33647		Incurred: 6/1/2009 - pres Consideration: Equipment Calibration				889.90
ACCOUNT NO. D-7205889 Orkin Exterminating 12710 Magnolia Ave Riverside, CA 92503-4620		Incurred: 3/26/2009 - pres Consideration: Extermination Services				704.00
ACCOUNT NO. SD2081 Pacific Rim Mechanical 7655 Convoy Court San Diego, CA 92111		Incurred: 4/30/2009 - pres Consideration: Building Maintenance				355.00
Subtotal >						\$ 3,350.69
Total >						\$

Sheet no. 10 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00497

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation,
DebtorCase No. _____
(If known)**SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 2077-3003-86-6 Pitney Bowes P.O. Box 856390 Louisville, KY 40285-6390		Incurred: 6/11/2009 - pres Consideration: Software Update				342.57
ACCOUNT NO. 6644455 Pitney Bowes P.O. Box 856460 Louisville, KY 40285-6460		Incurred: 5/13/2009 - pres Consideration: Equipment Lease				2,021.79
ACCOUNT NO. CAL-134234 Premium Financing Specialists P.O. Box 100384 Pasadena, CA 91189-0384		Incurred: 8/4/2009 - pres Consideration: Business Insurance				6,353.72
ACCOUNT NO. CAL-131743 Premium Financing Specialists P.O. Box 100384 Pasadena, CA 91189-0384		Incurred: 7/30/2009 - pres Consideration: Business Insurance				9,513.81
ACCOUNT NO. 116261-000001-JDA Procopio, Cory, Hargreaves & Savitch LLC 530 B Street Suite 2100 San Diego, CA 92101-4469		Incurred: 6/1/2009 - pres Consideration: Legal Services				210.00
Subtotal >						\$ 18,441.89
Total >						\$

Sheet no. 11 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00498

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBITOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 4894001313 Recall Secure Destruction Services P.O. Box 841709 Dallas, TX 75284-1709		Incurred: 4/29/2009 - pres Consideration: Destruction Services				395.74
ACCOUNT NO. QB Rhule Construction 15330 Avenue of Science San Diego, CA 92128		Incurred: 2006 - present Consideration: Building Improvements.				27,716.58
ACCOUNT NO. N/A Riverwalk Square Dev (Safari Drive) 4725 N. Scottsdale Road #110 Scottsdale, AZ 85251		Incurred: 3/17/2009 - pres Consideration: Client Refund on prepayment of services				26,600.00
ACCOUNT NO. QB vs Olague et al Schor & Freeland 600 B Street, Ste 2200 San Diego, CA 92101		Incurred: 1/14/2009 - pres Consideration: Legal Services				37,090.84
ACCOUNT NO. QB v. Criterium Schor & Freeland 600 B Street, Ste 2200 San Diego, CA 92101		Incurred: 11/24/2008 - pres Consideration: Legal Services				104,680.63
Sheet no. <u>12</u> of <u>16</u> continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims		Subtotal ➤			\$ 196,483.79	
		Total ➤			\$	

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA 00499

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation
DebtorCase No. _____
(If known)**SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. Employment Schor & Freeland 600 B Street, Ste 2200 San Diego, CA 92101		Incurred: 5/31/2009 - pres Consideration: Legal Services				826.28
ACCOUNT NO. EGR156351 Schwartz & Janzen, LLP 12100 Wilshire Blvd Ste 1125 Los Angeles, CA 90025-7117		Incurred: 4/1/2009 - pres Consideration: Legal Services				16,692.31
ACCOUNT NO. KCESD: 107-257 Schwartz & Janzen, LLP 12100 Wilshire Blvd Ste 1125 Los Angeles, CA 90025-7117		Incurred: 5/1/2009 - pres Consideration: Legal Services				97.50
ACCOUNT NO. N/A Science Building Partners, LLC & FAEC Holdings 382771, LLC, Tenants in Common 15330 Ave of Science San Diego, CA 92128		Incurred: 12/08/08 Consideration: Accrued Interest on Note				19,661.54
ACCOUNT NO. N/A Science Building Partners, LLC / FAEC Holdings 382771, LLC 15330 Ave of Science San Diego, CA 92128		Incurred: 4/1/2008 - pres Consideration: Rent - Commercial Lease				469,781.38
Subtotal >						\$ 507,059.01
Total >						\$

Sheet no. 13 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00500

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____
(If known)**SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. N/A Science Building Partners, LLC / FAEC Holdings 382771, LLC 15330 Ave of Science San Diego, CA 92128		Incurred: 12/08/08 Consideration: Business Loan				308,272.48
ACCOUNT NO. 111123015027 Stanley Security Solutions Dept Ch 10651 Palatine, IL 60055		Incurred: 6/1/2009 - pres Consideration: Security Monitoring				492.35
ACCOUNT NO. 010-1000829391 State of NV - Business License Renew P.O. Box 52614 Phoenix, AZ 85072-2614		Incurred: 7/1/2009 - pres Consideration: Business License				200.00
ACCOUNT NO. N/A Theodore Konechne 4657 Poppy Hills Dr Frisco, TX 75035		Incurred: 8/1/2009 - pres Consideration: Mileage, travel related expenses				361.13
ACCOUNT NO. QB v WCPC Thompson Law Group 2550 Fifth Ave., Ste 600 San Diego, CA 92103		Incurred: 11/5/2008 - pres Consideration: Legal Services			X	79,444.03
Subtotal >						\$ 388,769.99
Total >						\$

Sheet no. 14 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00501

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 185002/80152 Thomson Compumark P.O. Box 71892 Chicago, IL 60694-1892		Incurred: 4/1/2009 - pres Consideration: Trademark Monitoring				2,955.00
ACCOUNT NO. 1003329394 Thomson West P.O. Box 6292 Carol Stream, IL 60197-6292		Incurred: 4/1/2009 - pres Consideration: Legal Research Tool				3,195.73
ACCOUNT NO. QB vs. WCPC Thorsnes Litigation Services 2550 Fifth Ave Ninth Fl San Diego, CA 92103		Incurred: 10/20/2008 - pres Consideration: Legal Services				15,183.50
ACCOUNT NO. C0227455000 Thrifty Car Rental Department 2241 Tulsa, OK 74182		Incurred: 4/24/2009 - pres Consideration: Car Rental Agency				1,220.29
ACCOUNT NO: 266467 TW Telecom P.O. Box 172567 Denver, CO 80217-2567		Incurred: 5/15/2009 - pres Consideration: Telephone & Internet Services				6,722.94

Sheet no. 15 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims

Subtotal > \$ 29,277.46

Total >

\$

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00502

B6F (Official Form 6F) (12/07) - Cont.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 570496122-00001 Verizon - CA PO Box 9622 Mission Hills, CA 91346-9622			Incurred: 5/4/2009 - pres Consideration: Cell Phone Service				2,544.23
ACCOUNT NO. N/A Village Lock & Key 12845 Poway Rd, #303 Poway, CA 92064			Incurred: 5/11/2009 - pres Consideration: Building Maintenance				214.81
ACCOUNT NO. 12 267182 0002 Vision Service Plan PO Box 45210 San Francisco, CA 94145-5210			Incurred: 5/21/2009 - pres Consideration: Health Insurance				519.54
ACCOUNT NO. N/A Western Plumbing & Piping Inc PO Box 1269 El Cajon, CA 92022-1269			Incurred: 4/29/2009 - pres Consideration: Building Maintenance				150.00
ACCOUNT NO. 708738240 Xerox Corporation PO Box 660501 Dallas, TX 75266-0501			Incurred: 4/11/2009 - pres Consideration: Equipment Lease				12,380.30
Subtotal							\$ 15,808.88
Total							\$ 6,361,643.64

Sheet no. 16 of 16 continuation sheets attached
to Schedule of Creditors Holding Unsecured
Nonpriority Claims

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the
Statistical Summary of Certain Liabilities and Related Data.)

ROA_00503

B6G (Official Form 6G) (12/07)

In re Qualitybuilt.com, a California corporationCase No. _____
(if known)

Debtor

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
FAEC Holdings 382771, LLC & Science Building Partners, LLC 15330 Ave of Science San Diego, CA 92128	Ten year lease of non-residential real property commencing 08/01/06 through 07/31/16 Rent is \$115,000/month.
Pitney Bowes Global Financing Services PO Box 856460 Louisville, KY 40285-6460	Lease of two sets of mailing equipment.
Leaf Funding PO Box 644006 Cincinnati, OH 45264-4006	Lease of 20 toughbook computers
Xerox Capital Services, LLC PO Box 660501 Dallas, TX 75266-0501	Lease of two copy machines
Dolphin Capital 1720A Crete St. Moberly, MO 65270	Lease of two copy machines
Sonitrol / Stanley Security Systems Dept. Ch. 10651 Palatine, IL 60055	Five year lease of security monitoring equipment commencing 08/23/06.
Stanley R. Luhr & Elizabeth R. Michaelis 15330 Ave of Science San Diego, CA 92128	One year lease of corporate condo in Aurora, Colorado, expiring 12/31/09. Rent is \$1,500/month.

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES
 (Continuation Page)

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
Quality Built, LLC 700 Grayhawk Avenue Plantation, FL 33324	Asset Purchase Agreement
North Star Equity Solutions 1053 45 Commons Dr. #166-465 San Diego, CA 92127	Sublease
Product Development Systems PO Box 503281 San Diego, CA 92150	Sublease
Produx World, Inc 15330 Ave of Science San Diego, CA 92128	Sublease
Law Offices of Harvey Payne 15330 Ave of Science San Diego, CA 92128	Sublease
Bluewater Capital Mgmt 15330 Ave of Science San Diego, CA 92128	Sublease
Integrated Aqua Systems 15330 Ave of Science San Diego, CA 92128	Sublease
Regulatory Liaisons 112265 Timbergate Circle San Diego, CA 92128	Sublease

In re Qualitybuilt.com, a California corporation

Debtor

Case No. _____

(if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES
(Continuation Page)

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
Tasty Savings 15330 Ave of Science San Diego, CA 92128	Sublease

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B6H (Official Form 6H) (12/07)

In re Qualitybuilt.com, a California corporation

Case No. _____

Debtor

(if known)

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Stanley R. Luhr 1091 Singing Ridge Road El Cajon, CA 92019	California Bank & Trust 1024 Graves Ave. El Cajon, CA 92121
Elizabeth R. Michaelis 2224 Valley View Blvd. El Cajon, CA 92019	California Bank & Trust 1024 Graves Ave. El Cajon, CA 92121
Elizabeth R. Michaelis 2224 Valley View Blvd. El Cajon, CA 92019	Dolphin Capital 1720A Crete St. Moberly, MO 65270
Elizabeth R. Michaelis 2224 Valley View Blvd. El Cajon, CA 92019	Leaf Funding PO Box 644006 Cincinnati, OH 45264-4006

Qualitybuilt.com, a California corporation

In re

Debtor

Case No.

(If known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date _____

Signature: _____
Debtor:

Date _____

Signature: _____
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any,
of Bankruptcy Petition Preparer

Social Security No.
(Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address

X _____
Signature of Bankruptcy Petition Preparer

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both, 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the Secretary [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the Qualitybuilt.com, a California corporation [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 42 sheets (total shown on summary page plus 1), and that they are true and correct to the best of my knowledge, information, and belief.

Date 08/14/09

Signature: /s/ Elizabeth R. Michaelis

ELIZABETH R. MICHAELIS

[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both, 18 U.S.C. §§ 152 and 3571.

UNITED STATES BANKRUPTCY COURT
Southern District of California

In Re. Qualitybuilt.com, a California corporation

Case No. _____
(if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None
☐

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

	AMOUNT	SOURCE
2009	2,286,564.00	Monthly Invoices / Accrual
2008	8,864,245.00	Monthly Invoices / Accrual
2007	8,098,561.00	Monthly Invoices / Accrual

2. Income other than from employment or operation of business

None

☐

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

See Attachment SOA-2

3. Payments to creditors

None

☒

Complete a. or b., as appropriate, and c.

a. Individual or joint debtor(s) with primarily consumer debts: List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within 90 days immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF
PAYMENTSAMOUNT
PAIDAMOUNT STILL
OWING

None

☐

b. Debtor whose debts are not primarily consumer debts: List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR
AND RELATIONSHIP TO DEBTORDATES OF
PAYMENTSAMOUNT
PAIDAMOUNT STILL
OWING

See Attachment SOA-3b

In re Qualitybuilt.com

United States Bankruptcy Court for the Southern District of California

Case No. _____

ATTACHMENT SOA-2

Income from Subleases	through 8/11/2009	Security Dep	Net Income
North Star Equity Solutions	5,249.25	1,200.00	4,049.25
Product Development Systems	1,545.32	357.50	1,187.82
Produx World	1,320.00	600.00	720.00
Law Offices of Harvey M. Payne	2,787.10	600.00	2,187.10
Bluewater Capital Management LLC	1,016.13	450.00	566.13
Integrated Aqua Systems	1,197.00	399.00	798.00
Regulatory Liaisons	1,378.00	390.00	988.00
Tasty Savings	2,237.55	1,042.00	1,195.55
	<u>16,730.35</u>	<u>5,038.50</u>	<u>11,691.85</u>

Income from Meeting Room Rentals			
Windermere Exclusive Properties	2,993.20		2,993.20
Send Out Cards	945.00		945.00
	<u>3,938.20</u>	<u>0.00</u>	<u>3,938.20</u>

Insurance Monies Received			
2/17/2009 Travelers - Flood Damage	\$ 40,708.29		\$ 40,708.29
12/13/2008 Travelers - Flood Damage	\$ 178,369.32		\$ 178,369.32
	<u>\$ 219,077.61</u>	<u>\$ -</u>	<u>\$ 219,077.61</u>

Total Income other than from empl or operation of business**\$ 234,707.66**

In re Qualitybuilt.com

United States Bankruptcy Court for the Southern District of California

Case No. _____

ATTACHMENT SOA-3b

Vendor Name	Address	Check Dates	Amount Paid	Amount Still Owning as of 8/11/09	
AIG Insurance Company	22427 Network Place Chicago, IL 60673	5/20/2009	\$26,748.00		
Total AIG			\$26,748.00	44,601.00	
American Express	P.O. Box 360001 Fort Lauderdale, FL 33336	6/1/2009	\$14,721.31		
		7/1/2009	\$9,128.73		
		7/31/2009	\$5,325.03		
Total American Express			\$29,175.07	7,927.48	
Blue Shield of California	File 55331 Los Angeles, CA 90074-5331	7/30/2009	\$13,297.11		
Total Blue Shield of California			\$13,297.11	\$9,922.58	
Department of Industrial Relations	PO Box 420603 San Francisco, CA 94142	5/20/2009	\$6,700.00		
Total Department of Industrial Relations			\$6,700.00	0.00	
Kaiser Permanente	File No 5915 Los Angeles, CA 90074	5/20/2009	\$10,541.00		
		8/6/2009	\$8,575.00		
Total Kaiser Permanente			\$19,116.00	14,714.00	
CIT Technology Financial Services, Inc. (Microsoft Financing)	23896 Network Place Chicago, IL 60673	5/1/2009	\$19,332.54	20,901.36	secured
		5/20/2009	\$191.17		
Total CIT Technology Financial Services (Microsoft Financing)			\$19,523.71	\$20,901.36	
MidPacific Testing	94-547 Uke Street #200 Waipahu, HI 96797	5/8/2009	\$29,392.58		
		5/22/2009	\$12,073.54		
		6/5/2009	\$6,356.00		
		6/19/2009	\$19,701.98		
		7/3/2009	\$16,976.14		
		7/17/2009	\$12,230.13		
		7/31/2009	\$32,221.04		
Total Mid Pacific Testing			\$128,951.41	\$49,722.31	
Premium Financing Specialists	12424 Wilshire Blvd #1030 Los Angeles, CA 90025	5/20/2009	\$9,513.81		
		6/1/2009	\$6,014.28		
		6/3/2009	\$1,123.20		

In re Qualitybuilt.com

United States Bankruptcy Court for the Southern District of California

Case No. _____

ATTACHMENT SOA-3b

Vendor Name	Address	Check Dates	Amount Paid	Amount Still Owning as of 8/11/09
		6/29/2009	\$9,538.81	
		7/2/2009	\$6,014.28	
		8/3/2009	\$9,513.81	
		8/3/2009	\$6,353.72	
Total Premium Financing Specialists			\$48,071.91	35,000.00
Riverwalk Square Development LLC	4725 N. Scottsdale Rd Ste 110 Scottsdale, AZ 85251	5/12/2009	\$6,650.00	
		6/11/2009	\$6,650.00	
Total Riverwalk Square Development LLC			\$13,300.00	\$26,600.00
SD County Treasurer - Tax Collector	PO Box 129009 San Diego, CA 92112	6/30/2009	\$10,179.83	
Total San Diego Count Treasurer - Tax Collector			\$10,179.83	0.00
SDG & E	PO Box 25111 Santa Ana, CA 92799	5/11/2009	\$5,300.56	
		6/11/2009	\$3,300.60	
Total SDG & E			\$8,601.16	5,845.08
Science Building Partners LLC & FAEC Holdings 382771, LLC	15330 Avenue of Science San Diego, CA 92128	5/8/2009	\$10,000.00	

ROA_00513

None



c. *All debtors:* List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR
AND RELATIONSHIP TO DEBTOR

DATES OF
PAYMENTS

AMOUNT PAID

AMOUNT STILL
OWING

See Attachment SOA-3c

4. Suits and administrative proceedings, executions, garnishments and attachments

None



a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT
AND CASE NUMBER

NATURE OF PROCEEDING

COURT OR
AGENCY AND LOCATION

STATUS OR
DISPOSITION

QualityBuilt.com, Inc.
v. West Coast Property
Consultants, Inc.
Case No. D055231

Appeal of Jury Verdict in favor of
Qualitybuilt.com.

Court of Appeal, 4th
Appellate District, Division
1

Stayed

Thomas Clark & Alan
Thomas v.
QualityBuilt.com, Inc.
Case No.s D055311;
D054713

Appeal of case involving wrongful
employment termination

Court of Appeal, 4th
Appellate District, Division
1

Pending

Solutions Consulting
Group v.
QualityBuilt.com, Inc.;
QualityBuilt.com, Inc.
v. Solutions Consulting
Group
Case No. GIC871918

Declaratory Relief;
Cross-complaint for breach of
contract, breach of the covenant of
good faith and fair dealing,
professional negligence, negligent
misrepresentation and fraud in the
inducement/inception.

San Diego Superior Court

Stayed

QualityBuilt.com, Inc.
v. Coast to Coast
Engineering Services
Inc. dba Criterium
Engineers
Case No.
3:07-cv-00627-WQH-AJB

Appeal of Arbitration Award

U.S. District Court,
Southern District of
California, San Diego
Division

Pending

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
Continental Casualty Company v. West Coast Property Consultants Inc.; QualityBuilt.com Inc. Case No. 3:09-cv-01031-W-CAB	Declaratory Relief	U.S. District Court, Southern District of California, San Diego Division	Pending
Westchester Surplus Lines Insurance v. Roy Anderson Corporation Case No. 1:08cv1434-HSO-JMR	Counterclaim for liability pursuant to quality assurance services provided to Roy Anderson.	U.S. District Court, for the Southern District of Mississippi, Southern Division	Pending
State Farm General Ins. v. Tessard Designs et al. Case No. 37-2008-00050383-CU-IC-NC	Liability pursuant to contract for quality assurance services for project in San Marcos, California.	San Diego Superior Court	Pending
San Diego Revitalization Corp. v. Martinez & Cutri Corp. Case No. GIC845232	Liability pursuant to contract for quality assurance services for project in San Diego, California.	San Diego Superior Court	Pending
Southshore Golf Villas Homeowners Assn v. Lake at Las Vegas Joint Venture Case No. A550021	Liability pursuant to contract for quality assurance services for project in Las Vegas, Nevada.	District Court, Clark County, Nevada	Pending
In re San Jose Brickyard Homeowners Assn Calderon Notice	Construction Defects	N/A	Pending
In re Molino Street Lofts Homeowners Assn Calderon Notice	Construction Defects	N/A	Pending
Pieropan v. QualityBuilt.com Case No. VNO 0558668	Workers Compensation Claim	Workers Compensation Appeal Board	Pending

In re Qualitybuilt.com

United States Bankruptcy Court for the Southern District of California

Case No. _____

ATTACHMENT SOA-3c

Payments made to Stanley R. Luhr and Elizabeth R. Michaelis for the rent of 14406 E. Evans Ave and 141 N. Granby Way #A Aurora, CO				
Date	Check #	Payable to	Check Amount	
10/1/2008	15269	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 5,000.00	
11/3/2008	15416	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 8,000.00	
11/26/2008	15544	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 7,000.00	
2/5/2009	15834	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 2,000.00	
3/3/2009	15929	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 5,000.00	
4/1/2009	16120	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 5,000.00	
4/30/2009	16219	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 4,100.00	
6/3/2009	16321	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 12,086.80	
6/8/2009	16325	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 1,000.00	
6/30/2009	16374	Stanley R. Luhr and Elizabeth R. Michaelis	\$ 5,000.00	
			\$ 54,186.80	
Payments made directly to Dovenmuehl Mortgage on behalf of Stanley R. Luhr & Elizabeth R. Michaelis for the mortgage pmt of 14406 E. Evans Ave Aurora, CO				
Date	Check #	Payable to	Check Amount	
8/1/2008	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
9/2/2008	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
10/2/2008	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
11/3/2008	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
12/1/2008	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
1/2/2009	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
2/2/2009	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
3/2/2009	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
4/1/2009	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
5/1/2009	Auto pay from bank account	Dovenmuehle Mortgage	\$ 6,844.86	
			\$ 68,448.60	
Total payments made to insiders or on behalf of insiders in the 1 yr preceding filing				\$ 122,635.40

- None ☒ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF
PERSON FOR WHOSE BENEFIT
PROPERTY WAS SEIZED

DATE OF
SEIZURE

DESCRIPTION AND
VALUE OF PROPERTY

5. Repossessions, foreclosures and returns

- None ☒ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND
ADDRESS OF
CREDITOR OR SELLER

DATE OF REPOSESSION,
FORECLOSURE SALE,
TRANSFER OR RETURN

DESCRIPTION AND
VALUE OF PROPERTY

6. Assignments and Receiverships

- None ☐ a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND
ADDRESS
OF ASSIGNEE

DATE OF ASSIGNMENT

TERMS OF
ASSIGNMENT
OR SETTLEMENT

West Coast Electronic Billing
2667 Camino Del Rio S., Ste
302
San Diego, CA 92108

05/13/09

Assignee receives 35% of any
amount collected and remits
the remaining 65% to debtor.
Assignment amount of
\$26,899.59.

West Coast Electronic Billing
2667 Camino Del Rio S., Ste
302
San Diego, CA 92108

08/06/09

Assignee receives 35% of any
amount collected and remits
the remaining 65% to debtor.
Assignment amount of
\$18,956.90.

- None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

- None ☒ List all gifts or charitable contributions made within one year immediately preceding the commencement of this case, except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

8. Losses

- None ☒ List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES, AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

9. Payments related to debt counseling or bankruptcy

- None ☒ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
L. Scott Keehn Keehn & Associates, APC 402 W. Broadway, Suite 1210 San Diego, CA 92101	08/11/09	\$12,371.35
L. Scott Keehn Keehn & Associates, APC 402 W. Broadway, Suite 1210 San Diego, CA 92101	08/11/09	\$10,000.00 (Chapter 11 Retainer)

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
L. Scott Keehn Keehn & Associates, APC 402 W. Broadway, Suite 1210 San Diego, CA 92101	08/14/09	\$1,039.00 (Chapter 11 Filing Fee)

See also Attachment SOA-9

10. Other transfers

None ☐ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Stanley R. Luhr 1091 Singing Ridge Road El Cajon, CA 92019 Relationship: President and 50% Shareholder	06/11/09	2006 Lexus LS430 \$25,000 cash received
Stanley R. Luhr 1091 Singing Ridge Road El Cajon, CA 92019 Relationship: President and 50% Shareholder	05/18/09	2006 Ford F350 Truck \$30,985 cash received

None ☒ b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY

In re Qualitybuilt.com
United States Bankruptcy Court for the Southern District of California
Case No. _____

ATTACHMENT SOA-9

OTHER PAYMENTS TO KEEHN & ASSOCIATES, APC

In addition to the payments for consultations concerning debt consolidation and relief under the bankruptcy law, Keehn & Associates, APC provided other legal services related to general business and collection matters. The payments made by the Debtor for those services are summarized below:

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
L. Scott Keehn Keehn & Associates, APC 402 W. Broadway, Suite 1210 San Diego, CA 92101	06/02/09	\$5,000.00
L. Scott Keehn Keehn & Associates, APC 402 W. Broadway, Suite 1210 San Diego, CA 92101	07/24/09	\$13,737.92

11. Closed financial accounts

None



List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None



List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY

13. Setoffs

None



List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

14. Property held for another person

None



List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
North Star Equity Solutions 1053 45 Commons Dr. #166-465 San Diego, CA 92127	\$1,200.00 Security Deposit	15330 Ave of Science San Diego, CA 92128
Law Offices of Harvey Payne 15330 Ave of Science San Diego, CA 92128	\$600.00 Security Deposit	15330 Ave of Science San Diego, CA 92128

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
Regulatory Liaisons 112265 Timbergate Circle San Diego, CA 92128	\$390.00 Security Deposit	15330 Ave of Science San Diego, CA 92128
Produx World, Inc 15330 Ave of Science San Diego, CA 92128	\$600.00 Security Deposit	15330 Ave of Science San Diego, CA 92128
Integrated Aqua Systems 15330 Ave of Science San Diego, CA 92128	\$399.00 Security Deposit	15330 Ave of Science San Diego, CA 92128
Product Development Systems PO Box 503281 San Diego, CA 92150	\$357.50 Security Deposit	15330 Ave of Science San Diego, CA 92128
Bluewater Capital Mgmt 15330 Ave of Science San Diego, CA 92128	\$450.00 Security Deposit	15330 Ave of Science San Diego, CA 92128
Tasty Savings 15330 Ave of Science San Diego, CA 92128	\$1,042.00 Security Deposit	15330 Ave of Science San Diego, CA 92128

15. Prior address of debtor

None



If the debtor has moved within the three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS

NAME USED

DATES OF OCCUPANCY

16. Spouses and Former Spouses

None



If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Sites

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None



- a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None



- b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None



- c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

18. Nature, location and name of business

None



- a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was self-employed in a trade, profession, or other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES

b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

None



NAME

ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, record and financial statements

None



a. List all bookkeepers and accountants who within the two years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS

DATES SERVICES RENDERED

Sheila A. Murphy
7715 El Cajon Blvd, #1
La Mesa, CA 91941

01/03/05 - present

Jennifer R. Jaggard
545 Osage Street
Spring Valley, CA 91977

09/03/02 - 05/22/08

None



b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME

ADDRESS

DATES SERVICES RENDERED

None ☒ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

None ☐ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the two years immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS

DATE
ISSUED

California Bank & Trust
1024 Graves Avenue
El Cajon, CA 92021

03/27/08

California Bank & Trust
1024 Graves Avenue
El Cajon, CA 92021

01/28/09

California Bank & Trust
1024 Graves Avenue
El Cajon, CA 92021

03/31/09

California Bank & Trust
1024 Graves Avenue
El Cajon, CA 92021

04/30/09

Compellent Credit
7808 Creekridge Circle, Suite
250
Edna, MN 55439

12/22/08

Gary Elzweig
700 Grayhawk Ave.
Plantation, FL 33324

06/25/09

Xerox
c/o Grayson Lafrenz
Mr. Copy
5657 Copley Dr.
San Diego, CA 92111

07/09/08

HD Supply Plumbing
3881 D Old Winter Garden Rd,
Ste D
Orlando, FL 32805

04/15/09

20. Inventories

- None ☐ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
06/01/09	Sheila Murphy	\$0.00
06/30/06	Michael Huff	\$33,197.92

- None ☐ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS
06/01/09	Sheila Murphy Qualitybuilt.com 15330 Ave of Science San Diego, CA 92128
06/30/06	Sheila Murphy Qualitybuilt.com 15330 Ave of Science San Diego, CA 92128

21. Current Partners, Officers, Directors and Shareholders

- None ☒ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST

- None ☐ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
Stanley R. Luhr 1091 Singing Ridge Road El Cajon, CA 92019	President	50%
Elizabeth R. Michaelis 5672 Amaya Dr., #202 La Mesa, CA 91942	Secretary	50%

22. Former partners, officers, directors and shareholders

- None ☒ a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

- None ☐ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

Garth Michaelis 11768 S. Oakmond Rd. S. Jordan, UT 84095	Director	06/05/09

23. Withdrawals from a partnership or distribution by a corporation

- None ☒ If the debtor is a partnership or a corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group

- None ☒ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the six-year period immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)

25. Pension Funds

- None ☐ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the six-year period immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)

Luhr Inc. dba Pacific Property Consultants 401k	33-0864693

* * * * *

ROA_00527

[If completed on behalf of a partnership or corporation]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date 08/14/09

Signature /s/ Elizabeth R. Michaelis
ELIZABETH R. MICHAELIS,
Secretary

Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

0 continuation sheets attached

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §152 and 3571

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and required under 11U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social Security No. (Required by 11 U.S.C. § 110(c).)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address

X
Signature of Bankruptcy Petition Preparer

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. §156.

UNITED STATES BANKRUPTCY COURT
Southern District of California

In re Qualitybuilt.com, a California corporation,
Debtor

Case No. _____

Chapter 11

VERIFICATION OF LIST OF CREDITORS

I hereby certify under penalty of perjury that the attached List of Creditors which consists of 14 pages, is true, correct and complete to the best of my knowledge.

Date 08/14/09

Signature /s/ Elizabeth R. Michaelis
ELIZABETH R. MICHAELIS,
Secretary

L. Scott Kehn
Kehn & Associates, APC
402 W. Broadway,
Suite 1210
San Diego, CA 92101
(619) 400-2200
(619) 400-2201

ROA_00529

ADP, Inc
5355 Orangethrope Ave
La Palma, CA 90623

ADT Security
P.O. Box 371956
Pittsburgh, PA 15250-7956

AIG
22427 Network Place
Chicago, IL 60673-1224

All County Fire Equip Corp
3163 Adams Avenue
San Diego, CA 92116

AMC
500 S. Marschall Rd, Ste 205
Shakopee, MN 55379

American Arbitration Assoc.
6795 North Palm Ave., 2nd Fl.
Fresno, CA 93704

American Express
P.O. Box 3600001
Fort Lauderdale, FL 33336-0001

Arrowhead
P.O. Box 856158
Louisville, KY 40285-6158

AT&T
Payment Center
Sacramento, CA 95887-0001

AT&T
Payment Center
Sacramento, CA 95887-0001

AT&T
Payment Center
Sacramento, CA 95887-0001

AT&T Advertising & Publishing
P.O. Box 989046
West Sacramento, CA 95798-9046

AT&T Mobility
P.O. Box 6463
Carol Stream, IL 60197-6463

Bates, Charles
8544 Alpine Avenue
La Mesa, CA 91941

Blue Shield of CA
P.O. Box 629014
El Dorado Hills, CA 95762-9014

Bluewater Capital Mgmt
15330 Ave of Science
San Diego, CA 92128

Brown, Jeremy
1165 Fitzgerald Rd #d
Simi Valle, CA 93065

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Reno, NV 89521

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3377 Carmel Mountain Rd, Ste 200
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File 5915
Los Angeles, CA 90074-5915

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Facsimile: (949) 720-4111

5 Attorneys for Quality Built, LLC,
6 Stalking Horse Bidder

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
10

11 In re

12 **QUALITYBUILT.COM**, a California
13 corporation,

14 Debtor and
15 Debtor-in-Possession.
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Case No. 09-12113-PB11

Chapter 11 Proceeding

**DECLARATION OF GARY ELZWEIG IN
SUPPORT OF DEBTOR'S MOTION FOR
ORDER APPROVING SALE OF
PROPERTY OF THE ESTATE FREE AND
CLEAR OF LIENS, CLAIMS AND
ENCUMBRANCES, SUBJECT TO
OVERBID**

DATE: March 1, 2010

TIME: 10:30 a.m.

DEPT.: 4

JUDGE: The Honorable Peter W. Bowie

EXHIBIT

L

1 I, Gary Elzweig, hereby declare and state as follows:

2 1. I am the managing and currently sole member of Quality Built, LLC ("Quality"),
3 the proposed purchaser of substantially all assets of QualityBuilt.com ("Debtor").

4 2. This Declaration is made in support of the Debtor's Motion for Order Approving
5 Sale of Property of the Estate Free and Clear of Liens, Claims and Encumbrances, Subject to
6 Overbid ("Sale Motion").

7 3. I have personal knowledge of the facts set forth herein, and if called upon to testify,
8 could and would do so competently and truthfully.

9 4. In 1977, I obtained a Bachelors of Science degree in Civil Engineering and
10 Engineering Mechanics from Columbia University, School of Engineering and Applied Sciences.
11 I have extensive knowledge and expertise in the construction quality assurance industries, and
12 have significant success operating business in these and other industries.

13 a. I am a Registered Professional Engineer in Florida and Colorado, with
14 almost thirty years of experience in the fields of engineering, design and construction. I
15 have satisfied the requirements for registration by the Structural Engineering Certification
16 Board (SECB), and as a State of Florida Special Inspector, Standard Building Inspector
17 and Radon Measurement Specialist.

18 b. For the last twenty-five years, I have successfully managed, built, and
19 grown exponentially specialty engineering and other businesses, including those in the
20 construction quality assurance industries. In 2002, for example, I started Code
21 Administration, Plans Review & Inspection Services, Inc. ("CAPRI"), a structural
22 engineering, inspection, and construction materials testing firm. In three years, I grew
23 CAPRI to a company generating annual revenues of more than \$50 million with 16 offices
24 and more than 400 employees nationwide. In 2008, I sold CAPRI for a significant
25 purchase price commensurate with market valuations for companies of this size in this
26 industry.

27 c. I serve and have served as a member and chairman of numerous committees
28 and boards, including Broward County Board of Rules & Appeals, Governor's Building

1 9. None of the anticipated members investing cash into Quality have any interest in or
2 connection to the Debtor, its officers, directors, or any other insiders of the Debtor.

3 10. As an inducement to attract and retain Elizabeth Michaelis and Stan Luhr to serve
4 as President and Chief Technical Officer, respectively, of Quality, Quality has offered these
5 individuals grants of 5% of the common equity interests outstanding in Quality in restricted stock
6 subject to customary forfeiture and repurchase provisions and restrictive covenants. I will serve as
7 Chairman of Quality, and Brian Kramer, a very successful seasoned engineering executive
8 licensed as a Professional Engineer in the State of California with Master of Business
9 Administration, will serve as Chief Executive Officer of Quality. As members holding the
10 majority interest in quality (70%), Mr. Kramer and I will have control over Quality and its
11 operations.

12 11. Quality's proposed offer to the Debtor's existing officers is very common for a
13 purchase transaction of this type. In fact, the going concern value of a company is often driven, in
14 large part, by the company's existing management, and the retention of such management is often
15 a critical condition to the purchase. I believe that Ms. Michaelis and Mr. Luhr are critical to the
16 success of Quality's business going forward, and that the proposed structure is necessary to retain
17 such individuals. Accordingly, the proposed retention and related structure is a necessary
18 condition to Quality's willingness to proceed with this transaction.

19 12. The purchase price that Quality has agreed to pay for the Debtor's assets has
20 decreased from the offer Quality had originally made at the beginning of this case because the
21 value of the Debtor's business has correspondingly decreased since the beginning of the case.
22 Having purchased and sold many businesses over the last twenty five years, I am very familiar
23 with valuations of companies and the value drivers behind them. The value of a company is based
24 on the present value of discounted cash flows, applying a market discount rate. As a practical
25 matter, this concept translates to valuations being determined by the product of a company's
26 EBITDA or Gross Sales and a valuation multiple, which varies by industry and fluctuates based
27 on market and other conditions, including quality of EBITDA, decreasing trends, etc. In this case,
28 the Debtor's EBITDA is non-existent and the Gross Sales has decreased since Quality's original

1 offer. Moreover, valuation multiples for deals in all industries have also decreased in light of the
2 economy and the inflated multiples paid by buyers over the last several years. Based on the
3 circumstances of this case, the value of the Debtor's business has decreased, as reflected in
4 Quality's current purchase offer.

5 Quality will not be assuming any debt owing by the Debtor, but rather only assuming certain
6 contracts for the continuance of service contracts with existing customers of the Debtor. Based on
7 the management experience and expertise in the construction quality assurance industry of and
8 financial backing behind Quality, I am confident that Quality will be able to continue performing
9 under the executory contracts to be assumed and assigned as identified in the Sale Motion.

10 13. I have reviewed the objections to the Sale Motion, and based on the comments,
11 Quality is willing to revise its requested minimum overbid to \$30,000, so long as Quality is
12 entitled to receive a break-up fee of \$25,000 ("Break-up Fee") in the event Quality is not the
13 highest bidder. The Debtor previously agreed to pay a \$50,000 break-up fee to Quality. Quality
14 believes that the \$25,000 Break-up Fee is more than reasonable because it:

- 15 a. represents less than 25% of the more than \$100,000 of actual expenses
16 incurred by Quality in pursuing this deal, including negotiating and
17 documenting the asset purchase agreement, from which all bidders benefit;
- 18 b. represents half of what the Debtor, in its business judgment, had negotiated
19 and agreed to with Quality;
- 20 c. encouraged the making of Quality's initial "stalking horse" offer at a point
21 where there were no competing bidders;
- 22 d. may discourage a bidding strategy designed to hold back competitive bids
23 until late in the process;
- 24 e. aided the Debtor in negotiating an initial bid that may be the highest bid
25 received by the Debtor;

26 ///

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28

1 f. has enhanced the bidding process by creating momentum towards the
2 consummation of a sale, which is otherwise likely not to occur and lead to a
3 liquidation.

4 I declare under penalty of perjury under the laws of the state of California and the United
5 States of America that the foregoing is true and correct to the best of my knowledge.

6 Executed this 19th day of February 2010, in Plantation, Florida.

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9 Gary Elzweig
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NOTE: When using this form to indicate service of a proposed order, DO NOT list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 660 Newport Center Drive., 4th Fl., Newport Beach, CA 92660.

A true and correct copy of the foregoing document described as: DECLARATION OF GARY ELZWEIG IN SUPPORT OF DEBTOR'S MOTION FOR ORDER APPROVING SALE OF PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, SUBJECT TO OVERBID will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On February 19, 2010 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- Michael D. Breslauer mbreslauer@swsslaw.com, wyones@swsslaw.com **Counsel to Coast to Coast, Objecting Party**
- Peter L. Duncan peterd@psdslaw.com, vickig@psdslaw.com
- Haeji Hong Haeji.Hong@usdoj.gov, USTP.Region15@usdoj.gov;shannon.m.vencill@usdoj.gov;tiffany.l.carroll@usdoj.gov
- Jay Hurst Jay.Hurst@oag.state.tx.us, sherri.simpson@oag.state.tx.us
- L. Scott Keehn scottk@keehnlaw.com, **Debtor's Counsel**
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- Dean Rallis drallis@sulmeyerlaw.com, agonzalez@sulmeyerlaw.com
- Gerald N. Sims jerrys@psdslaw.com
- United States Trustee ustp.region15@usdoj.gov

☒ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On February 19, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

US Trustee's Office – **Objecting Party**
Haeji Hong, Esq.
402 West Broadway, Suite 600
San Diego, CA 92101

☐ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on

2010 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

February 19, 2010

Susan Connor

Date

Type Name

Signature

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Builder Blog

Quality Built Acquired

TUESDAY, 23 MARCH 2010 09:45

Mar 23, 2010 09:45 CET

Two award winning engineering entrepreneurs, Gary H Elzweig and Brian C Kramer, team up to acquire substantially all of the assets of Quality Built®, pursuant to Section 363 of the US Bankruptcy Code. Quality Built® is a 16 year old professional construction service leader and is best known for its work in Total Quality Management. The company provides third-party quality assurance services as well as a full spectrum of risk management solutions via consultation services, data collection tools, reporting and support services on high-quality residential and commercial construction projects nationwide.

Gary H. Elzweig, P.E., S.E.C.B. was the founder and CEO of PEICO Engineering and CAPRI Engineering as well as COO of US Laboratories, with 30+ years of experience in the fields of engineering, design, and construction. In 2006 Mr. Elzweig was named as "Emerging Entrepreneur of the Year" for the State of Florida by Ernst & Young. The Ernst & Young Entrepreneur of the Year (EOY) annual award honors entrepreneurs whose ingenuity, hard work and perseverance have created and sustained successful, growing business ventures. Brian C. Kramer, R.C.E., G.E. was the founder and President of Testing Engineers of LA and is the current President of Twining Laboratories founded in 1898. Kramer possesses over fifteen years of technical and managerial experience on critical design and construction projects. His technical background is complimented by his M.B.A. from the University of California, Irvine.

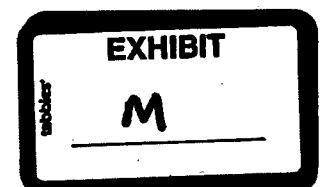
"This acquisition is an opportunity to strengthen our core services and expand into new markets and, combined with our current talents and proprietary systems, will distinguish us even further in the construction industry", says President Elizabeth (Beth) R. Michaelis, Beth Michaelis and Stan Luhr the founders of Quality Built® will remain on with the newly restructured firm as President and CTO, respectively. "Elzweig will serve as the Chairman while Kramer will serve as its CEO", Michaelis says.

Michaelis adds, "The acquisition is an extraordinary partnership and a unique opportunity to create more innovative risk management solutions for the construction industry. Mr. Elzweig's experience and visionary leadership coupled with Mr. Kramer's strategic plan for integrating resources for operational efficiency, positions Quality Built® to renew its place as the industry leader in third party quality assurance for the residential and commercial construction industry."

"Our goal is to create more cost effective risk management solutions for the construction industry utilizing Quality Built®'s comprehensive ISO 9001:2008 registered Quality Management Systems, as with our newest and most innovative product, QB Builder Link®. The QB Builder Link® is a powerful quality assurance data collection and reporting software solution via an interaction database system which allows builders to take control of their quality assurance efforts at a fraction of the cost while still having the benefit of independent third party oversight. As the industry makes a comeback, this type of product will make a lot of sense to builders, lenders, distressed debt turnaround specialists, and others", says Elzweig.

Kramer adds, "Quality Built® provides a tremendous platform for Gary Elzweig and me to establish the leading quality assurance company nationwide in the homebuilding and vertical construction industry. Through the talent of Stan Luhr, Beth Michaelis, and the other key personnel we are excited about the opportunity to leverage their patented ISO 9001:2008 registered Quality Management Systems software and technology in order to provide the highest level of value to our clients."

For more information, contact President Elizabeth (Beth) R. Michaelis @ Quality Built®, 14406 E. Evans Ave., Suite 100, Aurora, CO 80014, (720) 748-5903, www.qualitybuilt.com



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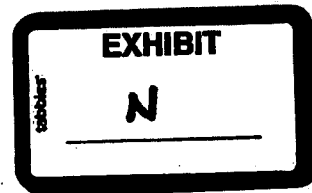
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About QB

The Quality Built® program was founded in 1994 on extensive litigation experience and a long history of conducting inspections for the construction industry. Our experience includes an impressive and varied list of commercial and residential projects as well as a background of more than 2,000 litigation cases that have encompassed investigations of hundreds of diverse building performance and project failures. The lessons learned from analyzing and repairing these projects have formed the basis of the Quality Built knowledge database, which is used to evaluate builder quality and minimize construction defects.

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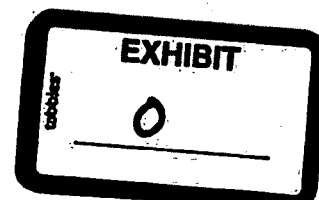
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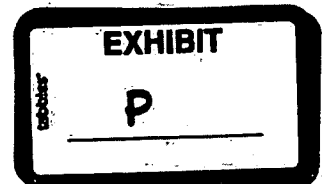
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Executive Team

Gary H. Elzweig, PE, SECB

Chairman and Managing Member

Gary is a graduate of Columbia University School of Engineering and Applied Sciences earning a Bachelor of Science Degree in Civil Engineering and Engineering Mechanics and is a Registered Professional Engineer in the states of Florida and Colorado with nearly 30 years of experience in the fields of engineering, design, and construction. Mr. Elzweig is registered by the Structural Engineering Certification Board (SECB), by the state of Florida as a Special Inspector, Standard Building Inspector and Radon Measurement Specialist.

Brian C. Kramer, PE, MBA

Chief Executive Officer

Brian received his MBA from the University of California at Irvine and is a graduate of San Diego State University and is a Registered Civil and Geotechnical Engineer in the State of California. For the past seven years, Brian has successfully managed Twining Laboratories, the leading full service construction inspection, materials testing, and engineering firm in California.

Elizabeth (Beth) Michaelis

President and Co-Founder

Beth is President of Quality Built®, the nation's leading construction quality assurance firm. In her more than 13 years with the Quality Built® organization, Beth continues to expand Quality Built's risk management and quality assurance line of services, with a special focus on cultivating large builder and insurance industry relationships.

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-7729

THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, individually, and on)
behalf of all others similarly situated,)

Plaintiffs,)

vs.)

QUALITY BUILT, LLC and COAST TO)
COAST ENGINEERING SERVICES, INC.)
d/b/a CRITERIUM ENGINEERS,)

Defendants.)
_____)

**PLAINTIFFS' MOTION FOR
RECONSIDERATION**

FILED
2017 APR 20 PM 1:27
JANETTE W. MCBRIDE
C.C.P. & C.S.
RICHLAND COUNTY

COME NOW, Plaintiffs, through their undersigned counsel, and file this Motion, pursuant to Rules 52 and 59(e) of the South Carolina Rules of Civil Procedure, requesting that the Court amend and/or reconsider its April 10, 2017 Order that granted Defendant Quality Built, LLC's Motion for Declaratory Relief (the "Order"), and show the Court the following:

SUMMARY OF GROUNDS

There are three main defects in the Order, which led to the finding that Quality Built, LLC was free of liability under Rule 57, SCRPC. First, the Order errs in its interpretation of the relevant case law and its application to this case. Second, the Order is procedurally and substantively incorrect. Third, the Order fails to rule on all the issues raised by Plaintiffs, which is necessary for Plaintiffs to appeal the Order on the basis of those issues and ultimately prevail. "If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for

appellate review.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *see also* Rules 52(b) and 59(e), SCRPC.

BACKGROUND

For brevity, Plaintiffs refer to and reincorporate the Procedural History and Corporate History of Quality Built, LLC from *Plaintiffs’ Memorandum in Opposition to Defendant’s Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment*, for the factual background of this Memorandum.

ARGUMENT

I. The Order Should Be Amended Because It Does Not Accurately Analyze and Apply the Applicable Case Law to the Facts at Issue.

The Order incorrectly held that Quality Built, LLC purchased Predecessor QualityBuilt.com’s assets free and clear of liability regarding The Gates. In making this ruling, the Court made two findings that misapply prevailing case law:

- The Order incorrectly focused on The Gates not being a product in the stream of commerce in order to justify its finding that product manufacturer liability cases that apply successor non-liability exceptions are not applicable (Order at 3-7); and
- The Order erroneously found that, as a matter of law, QualityBuilt.com’s Bankruptcy sale order is entitled to full faith and credit based on its language that purports to bar claims “before or after” the petition date, noting that case law cited by Plaintiffs dealt only with a sale order that barred claims “before” the closing of the asset sale (Order at 3-4, 6-7).

Neither of these holdings are correct.

A. The Order’s Narrow Analysis of Case Law Regarding Exceptions to Successor Non-Liability is Incorrect.

The Order propounds a narrow analysis of case law regarding exceptions to successor non-liability that would unjustifiably limit application of those exceptions to defective product actions:

[I]t is the Nationwide case that contemplates a means for a plaintiff to pursue an action in tort against the product manufacturer, post-bankruptcy sale. [] [T]his Court declines to extend the holdings in defective-product actions such as Nationwide to the instant case, as this case merely concerns inspection services performed in a single occurrence.

(Order at 6, 7). This narrow application is unsupported by the law.

So long as a successor's conduct meets one or more of the tests articulated in *Brown v. Am. Ry. Express Co.*, a successor may be held liable for the torts of its predecessor. *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 394 S.C. 54, 58-61, 714 S.E.2d 322, 324-326 (2011), *remanded to* No. 2007CP42296, 2014 WL 7664673, at *5-7 (S.C. Ct. Com. Pl. Apr. 29, 2014), *aff'd as modified*, No. 2014-001151 & 2016-UP-168, 2016 WL 1359188, at *1-4 (S.C. Ct. App. Apr. 6, 2016); *Simmons v. Mark Lift Industries, Inc.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005) ("In the absence of a statute, a successor or purchasing company is not liable for the debts of a predecessor or selling company **unless** (1) there was an agreement to assume such debts, (2) the circumstances surrounding the transaction warrant a finding of a consolidation or merger of the two corporations, (3) the successor company was a mere continuation of the predecessor, or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims.") (citing *Brown v. Am. Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924)).

South Carolina Courts have repeatedly applied the exceptions to successor non-liability set forth in *Brown* and *Simmons* in factual scenarios outside the products liability context. *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 306-307, 657 S.E.2d 67, 69-70 (Ct. App. 2008) (exceptions to successor non-liability applied in action to enforce car warranty that alleged breach of contract, unfair trade practices, and willful and malicious conduct); *Pacific Capro Indus. v. Glob. Advantage Distribution, Inc.*, No. CA 4:08CV4155-RBH, 2010 WL 890052, at

*4-5 (D.S.C. Mar. 8, 2010) (exceptions to successor non-liability applied in action regarding storage agreement that alleged disgorgement, civil conspiracy and unjust enrichment/restitution); *Ashley II of Charleston, L.L.C. v. PCS Nitrogen, Inc.*, No. CIV.A. 2:05-2782-CWH, 2007 WL 2893372, at *9-10 (D.S.C. Sept. 28, 2007) (exceptions to successor non-liability applied in action regarding environmental liabilities filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980). In light of cases like *Walton, Pacific* and *Ashley II*, the Order should be amended to apply *Nationwide* and the exceptions to successor non-liability in this factual context.

B. The Language of the QualityBuilt.com Sale Order Does Not Bar Plaintiffs' Claims.

The Order focuses on the language of the QualityBuilt.com bankruptcy sale order that purports to bar claims “before or after” the bankruptcy petition. (Order at 3-4). In support, the Order distinguishes the more narrow language in the *Nationwide* sale order that only refers to barring “claims arising before the closing of the sale of the assets” (Order at 3) (emphasis added) (citing *Nationwide*, 394 S.C. 54, 58-59, 714 S.E.2d 322, 325). However, this point is undermined by one of the cases cited in *Nationwide* – *In re Grumman Olson Industries, Inc.*, 445 B.R. 243, 247 (Bkrtcy. S.D.N.Y. 2011).

The *Nationwide* court looked to the analysis in *In re Grumman* regarding the limits a free and clear bankruptcy sale places on a creditor to *in rem* relief against bankruptcy sale proceeds. *Nationwide*, 394 S.C. at 59, 714 S.E.2d at 325. Notably, in *In re Grumman*, the “free and clear” provision of the sale order was the same as in the case at bar – the sale was free and clear of all claims “arising prior to or subsequent to” the petition date:

The sale ... of the assets to be purchased under the Lot 2 APA (the “Lot 2 Assets”) shall be free and clear of all ... claims ... and other interests ... and all debts arising in any way in connection with any acts of the Debtor, claims

(including but not limited to “claims” as that term is defined in the Bankruptcy Code) ... and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this Chapter 11 case ... (the foregoing collectively referred to as “Claims”) ... and holders thereof shall be permanently enjoined from asserting such against the Lot 2 Assets and the [sic] shall look solely to the proceeds of the sale.

In re Grumman, 445 B.R. at 246. Even with the broader language of this free and clear clause, the *Grumman* Court still found that the Sale Order did not prohibit a third party’s claim against a bankrupt entity’s successor. *In re Grumman*, 445 B.R. at 250. Just as in *Grumman*, here the “before or after” language in the Sale Order does not bar Plaintiffs’ claims.

II. The Order is Procedurally and Substantively Incorrect.

In addition to the foregoing, the Order grants declaratory relief over Plaintiffs’ objection when there was not a cause of action for declaratory relief pending. To the extent the Order is deemed to be a grant of Summary Judgment, the Order is further incorrect as it decides material issues of fact rather than taking the facts in the light most favorable to the non-moving party. For instance, the Order’s conclusion “that Defendant is not a successor of ongoing conduct...” is belied by the evidence submitted by Plaintiffs. This factual finding is incorrect even in the Rule 57, SCRCP, context as Plaintiffs have demanded trial by jury.

III. The Order Should be Amended to Provide Rulings on All Issues Raised by Plaintiffs.

The Order does not rule on all the issues raised in Plaintiffs’ Memorandum. Plaintiffs request a ruling on each of the following issues that the Court did not rule on:

1. Whether Plaintiffs’ lack of a pre-bankruptcy relationship with QualityBuilt.com rendered the bankruptcy sale order inapplicable as provided in *Nationwide*:

[A]n individual has a § 101(5) claim [which is limited by the free and clear sale to *in rem* against the sale proceeds held by the Debtor] against a debtor manufacturer if (i) events occurring before confirmation create a relationship, such as contact, exposure, impact, or privity, between the claimant and the debtor’s product; and

(ii) the basis for liability is the debtor's prepetition conduct in designing, manufacturing and selling the allegedly defective or dangerous product. The debtor's prepetition conduct gives rise to a claim to be administered in a [bankruptcy] case only if there is a relationship established before confirmation between an identifiable claimant or group of claimants and that prepetition conduct.

Nationwide, 394 S.C. at 58-59, 714 S.E.2d at 325 (lower court decision to grant motion to dismiss based on sale order's express preclusion of state law actions reversed because plaintiff had no relationship with debtor prior to bankruptcy) (emphasis added) (quoting *Epstein v. Official Committee of Unsecured Creditors (In re Piper Aircraft Corp.)*, 58 F.3d 1573, 1577 (11th Cir.1995) (claimants that had no pre-bankruptcy relationship with debtor held not to have Section 101(5) claims)); *Simmons*, 366 S.C. at 309-313, 622 S.E.2d at 214-215 (third party with no pre-bankruptcy relationship to predecessor allowed to proceed with claims against successor despite protective provisions in purchase agreement); *see also Holloway v. John E. Smith's Sons Co., Div. of Hobam, Inc.*, 432 F.Supp. 454, 455-56 (D.S.C. 1977) (summary judgment denied to successor of bankrupt entity, and claims by third party that had no pre-bankruptcy relationship with bankrupt-predecessor allowed to proceed) (Plaintiffs' Memorandum at 10-12);

2. Whether Plaintiffs established a right to bring their claims under state law based on the mere continuation exception to successor non-liability, rather than under Section 101(5):

Having established that they are not § 101(5) claimants, whether appellants will be able to hold respondent liable under a successor liability theory is a question of state law. [] If appellants can establish that respondent's conduct meets one or more of the [*Brown*] tests, then respondent may be liable to them.

Nationwide, 394 S.C. at 60, 61, 714 S.E.2d at 325 (citing *Simmons*, 366 S.C. 308, 622 S.E.2d 213; *Brown*, 128 S.C. 428, 123 S.E. 97, 98-99) (Plaintiffs' Memorandum at 12-13); and

3. Whether Quality Built, LLC is potentially liable for the acts and omission of its predecessor, QualityBuilt.com, under the mere continuation exception to successor non-liability

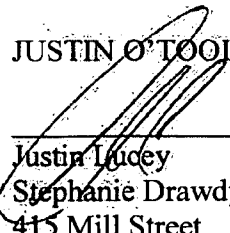
based on its shared officers/shareholders, as well as its marketing and conduct by which it holds itself out as QualityBuilt.com's successor. South Carolina Courts have held that these factors are sufficient to justify application of the mere continuation exception to successor non-liability. *Simmons*, 366 S.C. at 316 n. 1, 622 S.E.2d at 215 n. 1 (mere continuation exception applicable only when "predecessor and successor corporations have substantially the same officers, directors, or shareholders")); *Walton*, 376 S.C. at 307, 657 S.E.2d at 70 (mere continuation exception not applied because successor had no common officers or directors); *Holloway*, 432 F.Supp. at 456 (mere continuation exception applied and summary judgment motion by successor denied because successor produced same/similar products under same supervision and used same name as predecessor) (citing *Cyr v. B. Offen & Co., Inc.*, 501 F.2d 1145, 1151 (1 Cir. 1974) (successor that used predecessor's name, advertised itself using predecessor's experience, and produced same product in same way as predecessor was not immune from predecessor's liability)) (Plaintiffs' Memorandum at 13-15).

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request the Court either vacate its Order that granted Quality Built, LLC's Motion for Declaratory Relief filed on April 10, 2017, or reconsider, alter, and amend the Order in response to each of the points set forth herein.

JUSTIN O'TOOLE LUCEY, P.A.

By:


Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

Charleston, South Carolina
April 19, 2017

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Justin O'Toole Lucey, P.A., attorney for the Plaintiffs, do hereby certify that I have served the below listed counsel and parties in this action with a copy of *Plaintiffs' Motion for Reconsideration* by sending a copy of same via email and/or U.S. Mail:

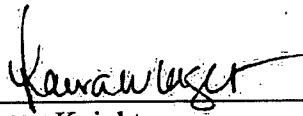
VIA EMAIL

Alan R. Belcher, Esq.
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VIA EMAIL

Kent Stair, Esq.
Robin Graham, Esq.
Carlock Copeland
40 Calhoun Street, Suite 400
Charleston, SC 29401

By: _____


Laura Knight

This 19 day of April, 2017
Charleston, South Carolina

ROA AND DEWITT
FILED
2017 APR 20 PM 1:27
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Gates at Williams-Brice, et al

Plaintiff,

vs.

Quality Built, LLC

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

2013-CP-40-7729

CASE NO.: 2014-CP-40-7229

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Justin Lucey, Bar No. _____ Address: 415 Mill Street, Mt. Pleasant SC 29464 Phone: 843-849-8400 Fax _____ E-mail: jlucey@lucey-law.com Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
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Nature of Motion: Motion to Reconsider		Court Reporter Needed: ☐ YES ☒ NO	
Estimated Time Needed: 15 mins			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for: ☐ Plaintiff / ☐ Defendant		Date submitted: _____	
SECTION III: Motion Fee			
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JEANETTE W. MOORE
C.C.P. & S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-40-7729

THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, Individually, and)
on behalf of all others similarly situated,)

Plaintiffs,

vs.

QUALITY BUILT, LLC, and COAST TO)
COAST ENGINEERING SERVICES, INC.)
d/b/a CRITERIUM ENGINEERS,)

Defendants.

DEFENDANT
QUALITY BUILT, LLC'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
RECONSIDERATION

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RICHLAND COUNTY

Defendant Quality Built, LLC ("Defendant") submits to the Court its Memorandum in Opposition to Plaintiffs' Motion for Reconsideration. In support of this Memorandum, Defendant incorporates by reference its *Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment*, Defendant's *Memorandum in Support of its Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment* (with exhibits), and arguments of counsel at the hearing in this matter on March 13, 2017. Defendant addresses Plaintiffs' additional arguments, not previously raised, as follows:

I. Plaintiffs argue the Order does not accurately analyze and apply the applicable case law to the facts at issue. Plaintiffs erroneously reduce the Order to a blanket ruling that exceptions to successor non-liability should not be applied in the instant case simply because it is a non-

product defect action. Plaintiffs reference additional cases¹ which do not include product defect causes of action in support thereof. Although the product-defect case sets a strong example for distinguishing the instant case to preclude application of successor liability, the Court's Order does not conclude this to be the basis of granting Defendant's Motion. Instead, the Court finds Qualitybuilt.com's alleged inspection services performed at The Gates at Williams-Brice Condominiums ("The Gates") constituted a completed transaction which has not continued into perpetuity, as placing a product into the stream of commerce will.

In Walton v. Mazda of Rock Hill, the predecessor company sold Mr. Walton a vehicle and when he returned for service within six months of purchase, the successor company would not honor the vehicle's written warranty issued at the time of purchase. Walton, 376 S.C. 301, 303 (Ct. App. 2008). Although Walton did not plead a defective product cause of action, the same concept applies in distinguishing Qualitybuilt.com's services in the instant case from that of sale of an automobile with an express warranty. The instant cases involves allegations arising from quality inspection services performed and concluded; there is no continuity of conduct as in Walton.

Plaintiffs also cite to Pacific Capro Indus. v. Glob. Advantage Distribution, Inc., 2010 WL 890052 (D.S.C. Mar. 8, 2010). However, in Pacific the District Court does not reach an analysis of whether to apply the parties' arguments of the legal standard, and simply dismisses the motion at hand without prejudice to provide time for the parties to conduct further discovery.

¹ Plaintiffs cite to Walton v. Mazda of Rock Hill, 376 S.C. 301 (Ct. App. 2008); Pacific Capro Indus. v. Glob. Advantage Distribution, Inc., 2010 WL 890052 (D.S.C. Mar. 8, 2010); and Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., 2007 WL 2893372 (D.S.C. Sept. 28, 2007). Via correspondence to the Court, Plaintiffs supplement their Motion with case law from the United States Court of Appeals for the Second Circuit, entitled Elliott v. GM, LLC (In re Motors Liquidation Co.), 829 F.3d 135 (2d Cir. N.Y. July 13, 2016).

Plaintiffs reference Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., which is a federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") case concerning the predecessor company's alleged contamination of 27 acres in Charleston in the 1960's and 1970's. 2007 WL 289337 (D.S.C. Sept. 28, 2007). Again, Defendant distinguishes the facts of Ashley II, which involves CERCLA and imposes strict liability upon defendants and parallels the same concept of a defective product action. Contamination of real property over a decade as contemplated by CERCLA is a far reach from that of Qualitybuilt.com's allegedly negligent inspection service performed at The Gates.

Recently, Plaintiffs supplemented their Motion referencing Elliott v. GM, LLC (In re Motors Liquidation Co.), 829 F.3d 135 (2d Cir. N.Y. July 13, 2016). Elliott contemplates an "Old GM" and a "New GM" distinguishing the General Motors company prior to Chapter 11 bankruptcy from the new General Motors which emerged after bankruptcy. Id. at 143. The New GM recalled automobiles which contained potentially lethal ignition defects that had been manufactured and disseminated by the Old GM. Id. The same premise of continuity of conduct applies to Elliott which distinguishes Qualitybuilt.com's performance of an inspection service at The Gates from that of New GM's recall of over 25 million dangerous vehicles distributed by Old GM to U.S. consumers. Id. at 148. Furthermore, Old GM knew of the defective ignition switch and received consumer complaints prior to its bankruptcy; as such, Old GM should have revealed the claims in bankruptcy. Id. at 160. New GM perpetuated the conduct with misrepresentations surrounding the fatal automobile ignitions. Id. at 157. In this matter, Plaintiffs seek to bridge a comparison between New GM's misrepresentations regarding safety of fatal automobile ignitions to that of Quality Built, LLC's alleged conduct under successor

liability theory. Not only has this argument been briefed and disposed of by the Court, but the New GM conduct to which the Plaintiffs refer to form the basis of independent claims is not tantamount to that of any alleged conduct by Quality Built, LLC.

Plaintiffs' interpretation of the Order and arguments are misplaced. The cases referenced by Plaintiffs, despite their lacking a defective product cause of action *per se* in the underlying pleadings, demonstrate a degree of continuity that is distinguishable from the instant case. In the same vein, a defective product action contemplates perpetuity by placement of a product in the stream of commerce, which the Court has distinguished from the instant case as well.

II. Plaintiffs argue in their Motion for Reconsideration that the Nationwide case is incorrectly distinguished in the Order, because a case cited by Nationwide has a "free and clear" clause with broader language, which is similar to Defendant's "free and clear" clause. Nationwide Mut. Ins. Co. v. Eagle Windows & Doors, Inc., 395 S.C. 54 (2011).

At the hearing, Plaintiffs argued Nationwide was on all fours with this case. The Order distinguishes Nationwide from the case at bar on many fronts. Again, the Order finds Nationwide's test applies to debtor manufacturers, and the "free and clear" clause was more limited than the instant case. Therefore, the Nationwide case is not on all fours as Plaintiffs argued.

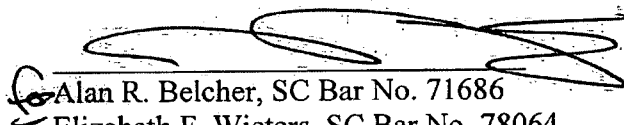
III. Plaintiffs submit to the Court that declaratory judgment is inappropriate, and if the Court has granted summary judgment it has inappropriately made findings of fact. Defendant argues the Court has wide latitude to grant declaratory relief as cited in its *Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment* and its *Memorandum in Support of its Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment*. Furthermore, Defendant maintains it is appropriate for the Court to make its ruling in this

matter, considering there is no genuine issue of material fact, and therefore the Court may determine judgment as a matter of law as to the issue at hand.

The remaining arguments have been previously addressed, and all the issues raised by the Plaintiffs have been heard and disposed of by the Court. As such, Defendant submits that the Court's *Order Granting Quality Built, LLC's Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment* should stand and Plaintiff's *Motion for Reconsideration* be denied.

Respectfully submitted,

HALL BOOTH SMITH, P.C.



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Counsel for Quality Built, LLC

June 5, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **Defendant Quality Built, LLC's Memorandum in Opposition to Plaintiffs' Motion for Reconsideration** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed to the following:

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FILED
2017 JUN -8 PM 3:16
JEANETTE W. MCBRIDE
C.C.P. & G.S.

This 5th day of June, 2017.

HALL, BOOTH, SMITH, P.C.

By: Shellie L. Fischer

Shellie L. Fischer
Legal Assistant

1 State of South Carolina

Court of Common Pleas

2 County of Richland

Fifth Judicial Circuit

3
4 The Gates at Williams-Brice)
Condominium Association, et al.,)

Transcript of Record
2013-CP-40-7729

5 Plaintiffs,)

6 vs.)

7 Quality Built, LLC, et al.,)

8 Defendants.)
9

10 March 13, 2017

11 Columbia, South Carolina

12 B E F O R E:

13 The Honorable G. Thomas Cooper, Judge

14 A P P E A R A N C E S:

15 Robert L. Luce, Esquire

16 Attorney for the Gates at Williams-Brice

17 Kent Taylor Stair, Esquire

18 Attorney for Criterium

19 Alan Ross Belcher, Jr., Esquire

20 Attorney for Quality Built

21 STACY S. JOHNSON

22 CIRCUIT COURT REPORTER
23
24
25

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(No exhibits marked.)

P R O C E E D I N G S

BAILIFF: Court come to order. All rise, please.

THE COURT: Be seated. Thank you.

All right. I've got two summary judgment motions; one from Quality Built and one from Coast to Coast or Criterium. Mr. Belcher --

MR. BELCHER: Here, Your Honor.

THE COURT: -- you represent?

MR. BELCHER: Quality Control.

THE COURT: And Mr. Stair?

MR. STAIR: Yes, sir.

THE COURT: All right. It's up to you, but I would assume -- Quality Built, I guess you can go first. You filed it first.

MR. BELCHER: Yes, Your Honor. Alan Belcher on behalf of Quality Built. If you'd like me to speak from the podium, I'm happy to.

THE COURT: Either one. It's up to you.

MR. BELCHER: All right.

THE COURT: You can do it right at your desk there.

MR. BELCHER: That would be great.

We're here today on really two motions, but they're sort of combined. There's a motion for declaratory relief and a motion for summary judgment. We submitted some memorandum in advance of the hearing today, but we're

1 -- what we're looking at here is we're looking at --
2 Quality Built, LLC, is the Defendant. Quality Built,
3 for background purposes, does business as a third-party
4 construction inspector of sorts. They go -- they
5 developed the software years ago, sort of an interface
6 where as construction projects are underway Quality
7 Built -- the old Quality Built dot com could go out and
8 investigate and inspect what was being done by the general
9 contractor and the subcontractors and report back to the
10 owners and insurance company. That was the original
11 software that was put together by Quality Built dot com.

12 At some point, I think around 2009 or 2010 Quality
13 Built dot com was on its way out of business and filed
14 bankruptcy under Chapter 11 and at that time Quality Built,
15 LLC, was formed.

16 **THE COURT:** The same people?

17 **MR. BELCHER:** There are -- there's some interplay
18 between the directors and officers of Quality Built, LLC,
19 and Quality Built dot com, whatever sort of organization
20 that was, but when the LLC was formed the purpose of the
21 LLC was to purchase assets out of bankruptcy and what they
22 were purchasing out of bankruptcy was the software, the
23 ability to go out there and apply the software interface
24 and allow others to use it so that construction monitoring
25 could go on.

1 **THE COURT:** Did they have any existing contracts at
2 the time of the bankruptcy?

3 **MR. BELCHER:** They did. They did. And the bankruptcy
4 order and the purchase -- the purchase agreement -- there
5 are two things. There's a purchase agreement which is
6 incorporated into the bankruptcy court's order allowing
7 the sale of the assets. Some of the things that were sold
8 were a couple of on-going contracts and also a few
9 liabilities, established liabilities.

10 **THE COURT:** Was this contract in existence at that
11 time?

12 **MR. BELCHER:** It was not. And when that sale took
13 place, and we can cite to you some of the provisions of
14 the order, which incorporates -- the order and the
15 purchase agreement which is incorporated into the order,
16 it makes it very clear that Quality Built, LLC's intention
17 in this purchase was to purchase only assets and certain
18 liabilities. And, in fact, the bankruptcy court order
19 says the purpose of this is to purchase assets and this
20 purchase would not go through if there were any contingent
21 liabilities out there.

22 **THE COURT:** Where is that -- where is that document?

23 **MR. BELCHER:** I can hand it up to you.

24 **THE COURT:** Well, I've got your memorandum.

25 **MR. BELCHER:** It would be Exhibit -- Exhibit A is the

1 order.

2 **THE COURT:** A is the order?

3 **MR. BELCHER:** Yes.

4 **THE COURT:** Okay. I've got A. I just hadn't had a
5 chance to review the entire document. And which section
6 are you referring to?

7 **MR. BELCHER:** If we look at the sale order, in
8 Paragraph W it says except as otherwise provided in the
9 purchase agreement all persons and entities and the
10 respective successors and assigns, including but not
11 limited to all debt security holders, equity security
12 holders, affiliates, governmental tax and regulatory
13 authorities --

14 **THE COURT:** Slow down. Slow down. She can't take it
15 down as fast you can read it.

16 **MR. BELCHER:** I'm sorry. I'm sorry.

17 **THE COURT:** Referring to W. I've got W.

18 **MR. BELCHER:** Okay. Litigation claimants, except for
19 the assumed liabilities arising under or out of or in
20 connection with. So it says that all claims are forever
21 barred by virtue of Paragraph 11.

22 **THE COURT:** Of W?

23 **MR. BELCHER:** Of W, yes.

24 **THE COURT:** Okay. Go ahead.

25 **MR. BELCHER:** And so I think what we're looking at

1 here is the issue raised by the Plaintiffs in this case as
2 to whether or not there are successor liability that would
3 survive in the state of South Carolina even though you have
4 a discharge in bankruptcy.

5 And the cases that are cited all go back to the Brown
6 case, which I think is a 1939 case; Brown versus American
7 Railroad, which is 128 S.C. 428. And there are some cases
8 that are cited that are closer in time to 2010 when the
9 bankruptcy was filed. The Simmons case, which deals with
10 successor liability and appears to be limited only to
11 product liability, personal injury arising from the use of
12 a product, where they have said that successor liability is
13 an issue that would allow an injured plaintiff's claim to
14 go forward despite the bankruptcy.

15 If you go back to Brown though, it doesn't deal with
16 that so much. It doesn't deal with product liability at
17 all. It deals with the assumption of liabilities and the
18 assumption of assets or the purchase of assets outside of
19 bankruptcy, completely outside of bankruptcy, where one
20 railway -- railroad company purchases assets from another
21 railroad company and the first railroad company continues
22 in existence, but I think the ultimate concern that the
23 court had there is that the successor should not be allowed
24 the benefit of purchasing the assets without being saddled
25 with the liabilities as well.

1 And if you look at what happened in the Quality Built
2 case, it's different than the Brown case because in the
3 Quality Built case there is still a fund of assets out
4 there or there was in the bankruptcy trustee's account to
5 satisfy any claims that would be made pursuant to Section
6 815 of the bankruptcy code. So here Quality Built bought
7 what it wanted to buy -- Quality Built, LLC, bought what
8 it wanted to buy out of the trustee's estate, the estate
9 in bankruptcy, and bought some liabilities that it assumed
10 to pay off and then the rest were to be discharged from
11 bankruptcy and any future claims just as with any other
12 entity or person discharged in bankruptcy those -- those
13 claims that come along later are barred, and so that's
14 our position here is that the order bars and estops the
15 Plaintiffs from making any claims against Quality Built,
16 LLC, that it may have had against Quality Built dot com
17 preceding back bankruptcy payments.

18 **THE COURT:** So an absolute bar?

19 **MR. BELCHER:** Yes, sir.

20 **THE COURT:** That's your position?

21 **MR. BELCHER:** That's our position.

22 **THE COURT:** All right.

23 **MR. BELCHER:** I mean, we understand that the argument
24 is successor liability and while there may be some elements
25 of successor liability that the Plaintiffs might be able

1 to point to at this stage, the real issue is if you go
2 back to Brown and read the intent of why successor
3 liability exists out there it's because -- and in Brown
4 actually, the original opinion in Brown, the Court said
5 there is sufficient assets out there for the claimant to
6 go pursue because when the railroad assumed some of the --
7 railroad number two in Brown assumed or purchased assets
8 there remained assets in railroad number one for claims
9 to be made against. The same thing existed here. It's
10 just that that reserved assets was in a bankruptcy -- the
11 trustee of the estate in bankruptcy, it was there, but it
12 is now gone.

13 **THE COURT:** All right. Well, before you do your
14 statute of limitations let me hear Mr. Luce on this issue.

15 **MR. LUCE:** Yes, Your Honor. There's actually two
16 distinct issues being presented to the Court in regard to
17 this motion, although they're all going to be found in
18 the same cases. The first issue is, is in South Carolina
19 under our common law on what grounds or in what situation
20 can you avoid the rule against successor liability and
21 Brown is -- is one of the seminal cases in this state
22 which sets forth the four ways you can get around the
23 assumption against successor liability. That's -- that's
24 really about the only relevance to this motion that Brown
25 has.

1 ... Since Brown was issued, I think, close to eighty
2 years ago, there's dozens of cases that have quoted Brown
3 for the four ways you can get -- you can assert successor
4 liability against assumption. The most notable one and one
5 of the cases we're gonna discuss in this case in particular
6 is called the mere continuation theory. If you can show
7 that the successor entity is a mere continuation of the
8 prior entity, you can hold them liable. Now to show mere
9 continuation --

10 **THE COURT:** That's not a bankruptcy issue though, is
11 it?

12 **MR. LUCE:** No, I'm gonna come back to that bankruptcy
13 issue in one second. In fact, I'll jump right forward to
14 the bankruptcy issue, Your Honor, since you brought that
15 up. Bankruptcy --

16 **THE COURT:** I mean, we're not talking mere
17 continuation here.

18 **MR. LUCE:** They -- they have -- they have woven in
19 a little bit, but let me focus on your question of
20 bankruptcy.

21 **THE COURT:** Go ahead.

22 **MR. LUCE:** Your Honor, it's absolutely clear that a
23 bankruptcy order can clear any existing liabilities at
24 that time, at the time the order was issued. There has to
25 be an existing liability or claim for it to be cleared.

1 Future claims that have not yet arisen that don't exist
2 that are unknown, you don't even know who the claimant is,
3 cannot be cleared by a bankruptcy order no matter how it's
4 written. The -- our courts have dealt with this at --
5 very specifically in the Nationwide Mutual Insurance versus
6 Eagle Windows and Doors case that we cite in our brief.
7 The Nationwide case was on all fours with this case with
8 the exception of one thing; this case has much better mere
9 continuation evidence than they did in Nationwide.
10 Nationwide didn't even have continuity of shareholders.
11 This case does have some continuity of shareholders. In
12 Nationwide, they studied whether or not a bankruptcy court
13 could issue a free and clear order incorporating the
14 purchase contract that also provides free and clear no
15 successor liability; whether or not, in fact, the
16 bankruptcy court can cut off future state law claims that
17 have not yet arisen. Our Supreme Court said no, absolutely
18 not.

19 An excellent case to explain the concept, Your Honor,
20 is another case cited in our brief which is the Piper or
21 Paper Aircraft case with the exact same situation as the
22 Nationwide case. There -- once again, there was a proposed
23 sale of the Piper manufacturing -- Aircraft manufacturing
24 facility to a new company who manufactured airplanes and
25 the new company to protect itself insisted in a purchase

1 and sale contract which would be incorporated into the
2 bankruptcy order that the purchaser must make a motion in
3 the bankruptcy court for there to be established a class
4 of future claimants and for the court to appoint somebody
5 to represent this class of future claimants and the theory
6 was that knowing aviation liability they could forecast
7 that one half of one percent of the \$400,000 planes
8 previously sold by Piper Aircraft would eventually give
9 rise to personal injury claims and, therefore, there might
10 be three hundred future claims out there that we need to
11 extinguish now or we're not going to buy the assets. That
12 court -- that Federal circuit court looked at the same
13 situation and said you can't extinguish future state law
14 claims, they don't exist right now, they -- they have not
15 arisen, you cannot give due process and notice to those
16 claimants who you're gonna try and extinguish because they
17 don't exist yet and you can't identify who they're gonna
18 be.

19 And the courts -- all the circuit courts and the
20 Nationwide court here in South Carolina explain it like
21 this, Your Honor. Anybody that has an existing claim at
22 the time of a bankruptcy must make an in rem claim in the
23 things that are left in the estate, the money or whatever
24 it happens to be, and once you get your pro rata share
25 everything else is extinguished, but if you don't yet have

1 an in rem -- you don't a claim and can't establish an in
2 rem claim, you can't make a claim in the bankruptcy court
3 and, likewise, you cannot be from frozen out by the
4 bankruptcy court pursuant to their order.

5 As to the language in the purchase and the sale
6 agreements that these bankruptcy court orders always
7 incorporate, the Court's -- including Nationwide here in
8 South Carolina regularly say that self-serving language is
9 binding between the parties to that contract, but they
10 cannot bind third parties with that self-serving language,
11 it's for a later court to evaluate whether or not the
12 future claims can be frozen out. And universally -- I've
13 not found a case in opposition, Your Honor. Universally
14 the circuit courts and our state Supreme Court has said
15 that a bankruptcy claim -- or if you don't have a 101(5)
16 claim that you can actually make and file in bankruptcy,
17 you are not eclipsed and no matter what the language in
18 the order, no matter what the language in the purchase and
19 sale contract. And they go on to say even in Nationwide
20 and then -- and, therefore, you're then back to the Brown
21 factors, can you establish one of these four criteria for
22 successor liability. And one of the things they explain,
23 Your Honor, is that a successor liability claim is not --
24 in some ways is not completely dependent upon conduct that
25 occurred before the bankruptcy, it's dependent upon the

1 successor's conduct after the bankruptcy; did they hold
2 themselves out as a continuation of the predecessor entity
3 on their web page, did they -- did they give stock to the
4 old company shareholders, did they hire the old company's
5 officers, did they keep all of the employees, did they
6 keep the manufacturing equipment, did they use the same
7 trademark on the equipment. Those are facts that take
8 place after the bankruptcy that under Brown establishes a
9 successor's potential liability for the -- the claims that
10 arose from previous conduct of the predecessor that weren't
11 known at the time of bankruptcy.

12 So, Your Honor, as far as we can tell it's universal.
13 And by the way, that Nationwide case we supplemented this
14 morning they went back down, they tried the case on the
15 Brown factors and they found continuation -- mere
16 continuation, Item 3 under Brown, went back up to the
17 court of appeals, the court of appeals just sustained it
18 in an unpublished opinion and cert is now -- a Petition
19 for Cert is now pending before the South Carolina Supreme
20 Court.

21 But the -- even the Simmons case mentioned by
22 counselor held, quote, a plaintiff may maintain a state
23 law-based claim under a successor liability theory against
24 the successor corporation which purchased the predecessor's
25 assets in bankruptcy -- excuse me, in a voluntary sale

1 approved by the Federal bankruptcy court provided one of
2 the exceptions set forth in the Brown opinion applies.

3 And, Your Honor, we -- I believe we cited almost a
4 half dozen Federal circuit cases that say the same thing
5 that our supreme court said in the 2009 Nationwide Mutual
6 Insurance Company versus Eagle Windows and Doors case cited
7 and quoted in our brief.

8 **THE COURT:** All right. Do you have a response?

9 **MR. BELCHER:** I guess just moving on to the motion for
10 summary judgment --

11 **THE COURT:** That's fine.

12 **MR. BELCHER:** -- it is what it is. I think the case
13 law's out there that we have one -- one look at it, counsel
14 has another look at it, and we believe that the purpose of
15 the sale agreement and the purpose of the bankruptcy order
16 was for the purchase of certain assets and liabilities of
17 the company and none other than those that were enumerated
18 in the order. It deals with a strict bankruptcy. I don't
19 know what the purpose of a bankruptcy is other than a final
20 discharge of all liabilities that exist, but, you know, as
21 to --

22 **THE COURT:** Well, he's saying he agrees with you on
23 that.

24 **MR. BELCHER:** Right. And I guess moving forward with
25 future conduct, I can see in the products liability cases

1 that are cited where the court has concern that when
2 somebody purchases raw materials, equipment, fabricated
3 scissor lips and things like that such as in the Simmons
4 case and they continue to market that product and market it
5 out there and put it out in the stream of commerce, which
6 is a big issue for products liability, you know, then maybe
7 there's an issue of successor liability. I mean, that's
8 why the court adopted the Simmons -- the rule in Simmons in
9 products liability. If you read the Simmons opinion, it's
10 clear product liability starts almost every paragraph in
11 that opinion. The Piper case is similar to that. Piper
12 wanting to file for bankruptcy when it knows that it has
13 airplanes out there with one -- you know, .015 percent that
14 may crash that's a liability out there, but it's based on
15 the manufacture of a product that's gonna continue to be
16 manufactured.

17 So in our case this was a single circumstance where
18 Quality Built didn't -- they did one job for one owner in
19 this case. Sure they did jobs all over the country, but
20 they did one job for one owner and that owner is ultimately
21 claiming that they were negligent in doing that job.
22 That's not -- that's a -- a liability that was fixed in
23 time. Whether they were negligent or they weren't
24 negligent, it was Quality Built dot com, it was not Quality
25 Built, LLC, moving forward as a company. So here there was

1 a clear line of demarcation as to when the conduct that
2 could give rise to injury was or was not, if you understand
3 what I'm saying. They were done with their job when they
4 were Quality Built dot com on the Gates at Williams Bryce,
5 then there was a dissolution, there was a bankruptcy, there
6 was a sale of assets and some liabilities for the work that
7 they had done before that -- before that bankruptcy, but
8 not thereafter going into the future. So there's a --
9 there's a difference in the continuum of activity, I guess,
10 there. But then moving --

11 **THE COURT:** All right, sir. Tell me about your
12 summary judgment.

13 **MR. BELCHER:** Moving onto summary judgment, I believe
14 the purpose of the summary judgment motion is just they're
15 two different grounds for the same relief. There's a
16 declaratory relief motion when I made my motion, I made it
17 before, maybe that's the only reason why, I think that we
18 made our motion, but I can ask the Court, I believe, to
19 interpret an order of a bankruptcy court and determine how
20 that applies to this case and I don't think you need too
21 many facts to do it. You have to look at the order and the
22 law and determine whether the order discharged --
23 discharged the liability. The summary judgment motion is
24 just a different standard, a Rule 56 standard for dismissal
25 on the same grounds.

1 **THE COURT:** You have no -- no other grounds?

2 **MR. BELCHER:** No.

3 **THE COURT:** No statute of limitations ground as
4 Mr. Stair?

5 **MR. BELCHER:** No.

6 **THE COURT:** All right. Any comment on that?

7 **MR. LUCE:** Three things on that line. Your co-counsel
8 did file in this summary judgment motion on Friday as well
9 as asserts the statute of limitations. Is that --

10 **MR. BELCHER:** We'll withdraw that.

11 **MR. LUCE:** You're withdrawing that. Okay. And -- and
12 just for clarification since the first motion was heard as
13 a summary judgment, we briefed -- it actually originally
14 was a motion for declaratory relief and we briefed why that
15 was procedurally improper.

16 And a last note, the Court has heard references to
17 successor liability in the products liability context.
18 Just -- just so the record's clear, Brown does not address
19 the products liability prong. That's a fifth prong.
20 There's a whole bunch of states out there that says you
21 don't even need continuity of operations or ownership if
22 you keep manufacturing the same product, the liability can
23 attach to the product line. That's not yet been adopted by
24 South Carolina, we're not here on that theory, we're here
25 purely on Brown. I just wanted the record to be clear on

1 that.

2 **THE COURT:** Okay. Mr. Stair?

3 **MR. STAIR:** Yes, sir. Your Honor, Kent Stair for
4 Criterium Engineers and I have a motion for summary
5 judgment on the statute of limitations. I filed as I came
6 in the door today a brief that we just finished this
7 morning. I wish it could have been earlier, but we worked
8 around the weekend to get that done. And then I'm also
9 handing that to you --

10 **THE COURT:** I think I have that.

11 **MR. STAIR:** You might have. Okay. Did we send it to
12 you by e-mail?

13 **THE COURT:** Yeah, we've got that.

14 **MR. STAIR:** Yeah, okay. Good. I'll take that back.
15 The document that I'm gonna -- this one is one that is a
16 compilation of documents that I'm going to refer to in my
17 discussion here, and you have not seen that one, and -- and
18 I think -- I'll give a copy -- the same copy to the Court
19 and I'll give these fellas one. And all of the attachments
20 that I'm going to refer to are in the record in the case by
21 way of pleadings or by way of their memorandum or by way of
22 our memorandum.

23 And what I do is in order to take a very elementary
24 view of things and I number things pages one through ten,
25 fifteen, twenty and we'll walk through them, and I hope it

1 shows you what I'm here to talk about, which is the statute
2 of limitations as relates to my client. And to jump to the
3 bottom line, the amended complaint against Criterium was
4 filed and served in May of 2016. And I'm going to tell you
5 why the statute of limitations expired in December of 2015.
6 And I hope I said '16 originally, but it's 2016 was when it
7 was served, 2015 is when the statute expired, and I'm going
8 to walk you through that if we might factually.

9 If you'll take a look at the documents that I referred
10 to, the first page, number one at the bottom, is a copy of
11 the initial complaint filed in what I called Gates I, and
12 that is the original construction defect lawsuit that the
13 same plaintiffs filed against the developer and contractor
14 in the Gates project. And in that project -- in that
15 lawsuit they said that there are all kinds of construction
16 defects and then they said that you-all are liable for it.
17 We were not involved in that case, but it -- what it does,
18 if you read the complaint, and it was attached in its
19 entirety as a copy -- as an attachment to our summary
20 judgment, it goes through the construction defect case and
21 demonstrates a clear knowledge of the plaintiffs on the
22 part of the construction defects and the like. And it was
23 initially against four defendants, and December 26, 2012,
24 and I note that because that indicates a clear date by
25 which it is clearly understood by the plaintiff they have a

1 cause of action for construction defect.

2 Page two of my handout is a plead -- is a pleading
3 from that original Page 1 paragraph of the lawsuit where
4 they affirmatively allege an estoppel from those people
5 from pleading the statute of limitations, and there's a
6 five paragraph explanation of that and that's gonna become
7 important as we continue because it's gonna be in our
8 lawsuit, too.

9 But basically what they're saying in 2012 is
10 defendants, you-all knew about the construction defect,
11 you should have told us, you didn't tell us, we didn't
12 know, we had no way to know and because of that you
13 original defendants cannot plead the statute of
14 limitations. That's in the other case that will become
15 important in our case. Page 4 of my -- of the attachment
16 is, again, Gates I, and it's an amendment in Gates I that
17 was filed in May of 2013, the effect of which was to add
18 thirty-three more defendants to the Gates I case, subtract
19 ten John Does. But, again, they plead the same things,
20 construction defects of all kinds and they also plead the
21 same estoppel for those additional thirty-three defendants
22 that they applied to the first four.

23 And then we have ultimately on Page 6 of the handout
24 the case that brings us here today, which is Gates I as I
25 call it, and it was filed in December of 2013. So it was

1 filed against Quality Built, Inc., only, LLC, we were not a
2 party to that case. But, again, it demonstrates a
3 knowledge that there is these construction defects that
4 were the subject of the same lawsuit. It's exactly -- if
5 you read the lawsuit, you really won't know the difference
6 in them, but they're two different lawsuits. And you'll
7 see on Page 7 that they allege in there the same estoppel,
8 the arguments, and it's literally the same, and then that
9 continues on to Page 8.

10 And then in the course of a deposition taken in
11 Gates I, if you'll look at Page 9 of my handout, this is a
12 deposition taken of the Quality Built person in Gates I and
13 it was taken as shown on Page 10 in August of 2014. So
14 we've got an August 2014 date. And in the course of the
15 deposition on Page 11, my client is identified and you'll
16 see there on Page 22 of the transcript it says the job was
17 done by Criterium Engineers. Question: Who at Criterium
18 would have been the point person and she said my contact
19 person would have been Alan Mooney. Who is Alan Mooney?
20 He's the owner of Criterium Engineers. Where are they
21 located? Portland, Maine. Do they have a national
22 footprint? Yes, they do. And so as of August 5, 2014, it
23 was very clear that they know about Criterium, they know
24 about Mr. Mooney and they know that they're in Portland,
25 Maine and that they have a national footprint.

1 The next page is Page 12 of the handout, which will
2 become important on the concealment issue, and I'll jump
3 ahead to that, if I might. In -- in their brief, they say
4 that we intentionally concealed ourself and so forth,
5 Criterium did, and they say that we wore other people's
6 shirts, Quality Built shirts. And we'll get back to this
7 in a minute, but while we're here you'll see that they were
8 told that -- by this woman that as it relates to business
9 cards, she said their business cards, which she was talking
10 about Criterium, would say that they're independent
11 consultants of Quality Built. They actually had a
12 Criterium Engineers logo and, matter of fact, their shirts
13 did, too. They had both Criterium Engineers and Quality's
14 logo, both logos on them. The same for the hats. All the
15 branding was co-branding and that's gonna be important when
16 I have to address the idea that we intentionally disguised
17 ourselves in the -- in the Portland job.

18 Now what they do in their brief is they attach an
19 Exhibit W, which is on Page 13, and this is part of their
20 brief, and they do it to explain some -- it's not clear
21 to me why they do it, but they get into it and they
22 demonstrate their ability to go to Google and find the
23 website for Criterium and they pull a page out that really
24 is not a significant page and I've circled a place here on
25 Page 13 where you don't see the corporate address and when

1 you look at the website on the website and if your clerk
2 were to Google right now Criterium Engineers, you would see
3 this page, but what he would see is what is on Page 14,
4 which is the same page except I've circled down at the
5 bottom the corporate address of Criterium and so it's
6 clearly shown and this is, of course, where they ultimately
7 served Criterium and then --

8 **THE COURT:** So you've got to go to the contact us?

9 **MR. STAIR:** Well, you know, actually we're going to
10 contact us here in just a second, yes. And what they did
11 not show in their brief, but what I have attached, is if
12 you do go to the website and instead of pulling down as
13 they did the middle thing that deals with something about
14 franchising, if you pull down company overview on Page 15
15 of my brief or my -- excuse me, my handout, you'll see that
16 Alan Mooney, a part of Criterium since 1974, basically is
17 the guy. And, of course, he was the same person who was
18 identified in August.

19 If you go to the next page, this is more of what
20 you'd see if you do the company overview and it's under
21 management and, again, there's Mr. Mooney and Mr. Mooney,
22 it's indicated in there that he bought Coast to Coast,
23 which is the corporation that does business as Criterium,
24 which they know because, of course, they sued them
25 correctly and it gives the entire management staff that you

1 can take a look at. And then, again, on Page 18 it, once
2 again, shows the corporate address in Portland, Maine,
3 which is the corporate address they ultimately served.

4 Then as you noted, if you go to the contact us page,
5 which is what you see on Page 19, and it's got corporate
6 contacts, the first one of which is Mr. Mooney, and what
7 they say is if you click his link, you can e-mail him. If
8 you don't want to e-mail him, you are given two different
9 phone numbers you can call and so it -- they don't make it
10 hard for them to find them if you Google them. On Page 20
11 if you Google Alan Mooney, you've got a LinkedIn thing that
12 says he's the president of Criterium Engineering and so
13 forth and he's, again, identified throughout all of this as
14 -- as the owner and president of Coast to Coast. If you go
15 to Page 21 and you Google Coast to Coast, it says Coast to
16 Coast is doing business a Criterium Engineers and so forth.
17 And so Page 22, if you do it all, Bloomberg explains the
18 same thing for you. We could go on and on and on from
19 there and what you'll find is they've been in business
20 since 1957 and they've always been available for anybody
21 who wants to find them and they go out of their way to be
22 seen and not to hide.

23 And so this morning I actually learned a trick I did
24 not know and that is that you can back to see what a Google
25 site looked like in days prior and I learned that from

1 reading the Plaintiff's brief against Quality that they had
2 done that in their brief, they went back and showed what
3 the website looked like from there and I asked my IT guy
4 can you do that and he could, and so Page 23 is what you
5 would have seen had you gone to the Criterium website as of
6 July 25, 1914 -- excuse me, 2014. And if you'll compare
7 them, you'll see it's exactly the same thing. Mr. Mooney
8 is mentioned throughout. I think it's probably the same
9 information, the same location, the same phone numbers that
10 you could call now you could call then and so forth. And
11 so the point is that as of August 5, 2014, which is
12 sixteen months into the three-year statute that would have
13 been -- no, excuse me, I think it's -- there's sixteen
14 months left in the statute of limitations established by
15 the original filing of the Gates I in which they take this
16 information and they can amend their complaint in the
17 original case, they could amend their complaint in Gates II
18 or, frankly, if they felt compelled and interested to do so
19 they could have filed a lawsuit against us just like they
20 did against Quality Built, which is important because later
21 they will say well, we had to wait on a motion to amend.
22 The reality is they didn't have to wait on a motion to
23 amend. If you have a compelling case that you need to get
24 filed because the statute is running, then you can file it
25 and we'd be here on a motion to consolidate rather than

1 where we are here today.

2 But I note on Page 25 of my handout then the next
3 thing chronologically that occurred is the motion to amend
4 the complaint in this case to add us and you will see it
5 was filed on November 5, 2015. Understand they got all of
6 the information that they needed in August of 2014. The
7 Google website would have given all of the information they
8 had or needed to have gotten to us, but for reasons that
9 are not clearly explained they waited a year and three or
10 so months to file a motion to amend the complaint to add
11 Criterium.

12 The complaint you can see on Page 26 was actually
13 prepared and signed October 30, 2015. I'm not mincing with
14 the difference between that and November, but the point is,
15 is that as of that time they did it and they knew what they
16 were doing. And Page 27, this is the amended complaint
17 that was attached to the motion to amend, and I included it
18 because it clearly identifies Coast to Coast Engineering
19 Services, Inc., as the people doing business as Criterium
20 and so if you had to spend ten minutes Googling rather than
21 ten seconds you could have figured it out and they did and
22 these are, of course, the right people.

23 Paragraph 15, which is on Page 28, is the thing that
24 says the Defendant Coast to Coast is a foreign corporation
25 organized under the laws of Maine. That is certainly

1 something that's true. That is something you can figure
2 out with Google without undue effort. And so the motion
3 is pending November early 2015 with a pending statute of
4 limitations to expire December 26, 2015, so we've got a
5 month and two or three weeks if you choose to go the motion
6 to amend route to get the amendment. They file it. It
7 sits at the courthouse and on Page 29 you'll see the first
8 apparent effort to have a hearing on the motion and it's an
9 e-mail from Mr. Luce's law clerk -- excuse me, paralegal,
10 and she's explaining to someone at the courthouse I just
11 got off the phone and found out that the motion wasn't
12 really set for a hearing and can we have a hearing. Well,
13 the point is, is that we waited five or six months. And I
14 say "we". They waited five or six months to request a
15 hearing while the statute of limitations was clearly
16 running and then they waited four or five months to do that
17 then and ultimately there was a consent order it turned
18 out. Of course, the best way to get it obviously if you
19 want to add them is call the other lawyer, in this case
20 Mr. Belcher, and clearly he's gonna want everybody he can
21 have sitting at the table with him when the jury comes in
22 and so the answer would have been yes, there's no
23 indication that was attempted, but instead ultimately there
24 was consent given. And you'll see on Page 30 that the
25 consent order adding us as a Defendant had been granted in

1 early May and on May 17th there was an amended summons. On
2 Page 31 of my handout is a copy of the amended complaint.
3 On Page 32, again, it identifies us then as it did in
4 October of the preceding year. The point being nothing
5 changed in between to give them additional or different
6 information.

7 And then if you'll look at Page 33, this is in the
8 pleading that was served on us in May, which is three years
9 and a half after they served the original lawsuit and the
10 exact allegations of estoppel against us are pled against
11 them, and I'll talk about that in more detail, but it is
12 literally a verbatim statement of the same -- the same
13 allegations. And that lawsuit is dated as is shown on
14 Page 35 on May 17, 2016. The certificate of service --
15 they served some discovery and on Page 36 is the
16 certificate of serve -- discovery that was filed and served
17 on May 20, 2016, along with all this stuff. And you'll see
18 they have two ways of serving Criterium. One is via
19 process server through Mr. Alan Mooney, Coast to Coast, at
20 the address of 22 Monument, which is the address that was
21 always shown on the website and remains their address
22 today. And then the second way of doing it is via the
23 Secretary of State and they served Coast to Coast Services
24 in care of a registered agent. He's located in Portland,
25 Maine, but they had the registered agent and so they served

1 that, too.

2 Page 37 is the letter that Mr. Luce wrote to serve
3 the complaint and it was May 23rd and he writes it to
4 Mr. Mooney at the address that had been known forever in
5 Portland, Maine, and he says enclosed -- as president of
6 Coast to Coast you're being served and you have to answer
7 within the law by thirty days. You'll note down at the
8 bottom of Page 37 it was a one day turnaround on service.
9 They attempted it May 23, 2016, it was received May 24,
10 2016. That was treated as the service date and our
11 litigation began.

12 It was initially removed before my arrival by other
13 counsel to Federal court in a timely way and there was a
14 fight in Federal court as to whether it could -- should
15 have stayed there and it did not and it came back to state
16 court and when it came back to state court, I got involved
17 and we filed an answer as reflected on Page 38, a timely
18 answer. And what we did do -- well, first of all, what we
19 did not do. What we did not do is we did not raise service
20 as a defense, we did not raise process as a defense, we did
21 not raise jurisdiction as a defense. We didn't raise
22 anything that would indicate a belief on our part that
23 service was not appropriate because service was appropriate
24 and what we did do though is we raised the statute of
25 limitations defense as one would expect we would do.

1 We then filed our motion for summary judgment on -- as
2 is reflected on Page 39 on December the 16th, I believe --
3 excuse me, December the 20th, and gave a brief that we
4 thought was fairly straightforward. It's essentially this
5 stuff; passage of time, more than three years, added late,
6 and -- and we noted in there the case law that says that
7 the three years doesn't -- it is related to the cause of
8 action, it's not related to an identity of the Defendant.
9 So, in other words, once the cause of action is recognized
10 and discovered, you have three years in which to sue
11 whoever it is you're going to sue and it's not you get
12 three years every time you learn someone new the clock
13 starts on someone new and in this case -- actually what's
14 interesting about it in their brief, memorandum -- it's not
15 a brief memorandum, it's not brief at all, in their
16 memorandum they note that the statute of limitations does
17 begin to run, they acknowledge it as to all defendants who
18 are known or reasonably discoverable. That's their term in
19 their acknowledgment and in their memorandum. And I don't
20 necessarily agree that that is a full statement of the law,
21 but I do say certainly if the Defendant is reasonably
22 discoverable within the three-year period of time, they
23 have to sue them. But what we know as a matter of fact and
24 it is an absolutely totally undisputed fact, we were not
25 only reasonably discoverable, we were actually discovered

1 and we were actually discovered halfway into the deal and
2 so they could have easily sued us at any point along the
3 way, but they instead chose to do it under the timing that
4 I have outlined.

5 Well, so I must confess I felt pretty good about our
6 motion for summary judgment and then this Wednesday we got
7 in an e-mail at 5:17 PM a lengthy brief filed by Mr. Luce.
8 And I'm not suggesting that was out of time, it was in
9 time, and so -- but my point is that what they -- well,
10 actually on Page 41 of my handout, I was quoting -- I was
11 underlining the part where they said as a part of their
12 memorandum that they postulate that the statute of
13 limitations begins to run as to everybody, these are their
14 italics, known or reasonably discoverable. And I've beat
15 that one to death already, so I won't do it any further.

16 But Page 42 is what really excited my weekend activity
17 or ignited, I don't know if it was excited or not, but in
18 the beginning of the discussion they said that we had
19 failed to meet the burden to show why the statute of
20 limitations applies and, frankly, we felt we more than met
21 the burden in what we showed. Then they say that -- let's
22 see. Criterium has not addressed its concealment of its
23 identity, comma, its absence from the State, comma, its
24 failure to register with the Secretary of State, comma, the
25 applicable chronology or the tolling effect of the

1 Plaintiff's motion to amend. And it also then says that we
2 failed to address or negate the attendant issues of fact
3 that cause summary judgment to be inappropriate at best.
4 And my reaction to that was -- I said well, you're correct,
5 we did not address the concealment of identity, we did not
6 address those other things as tolling matters because when
7 we got your complaint we were specifically told what the
8 tolling factors were and the tolling factors that we were
9 told about in the complaint was, one, we somehow knew
10 something and didn't tell them and they did not have the
11 ability to know it, therefore, they get an extension of the
12 statute of limitations.

13 Now, first of all, and I will say they have the good
14 sense to not argue that now because it obviously is not
15 applicable to us because more than three years before they
16 alleged exactly the same thing indicating a knowledge at
17 that time that they had this discovery. So you can't three
18 and a half years later say we still don't know, therefore,
19 you can't argue tolling, so obviously that has no
20 application to our case with us and to their credit they
21 don't argue that it does.

22 The next defense of tolling is even more interesting
23 and it is -- and it runs throughout all of the thing, it
24 says the Defendants are further estopped from relying upon
25 any statute of limitations as they have repeatedly

1 represented to Plaintiffs that they are only responsible
2 for breaking work for a period of one year after sale.
3 Well, the irony of that, of course, is their entire
4 contention against us is that we were in a hole hiding from
5 them, not telling them where we were and so the one thing
6 we were not doing was representing anything to them. But
7 that was the second ground for tolling and I did not bother
8 to address that in my initial brief because it's so
9 obviously inapplicable and to their credit again with their
10 memorandum they do not address it.

11 And so what I've filed today is the reaction to well,
12 you didn't address these other things and my reaction is
13 no, I didn't because it never occurred to me that I would
14 need to, but I am more than happy to do so now, and I will
15 now, and the first thing that needs to -- to be addressed
16 is what they say is the applicable statute -- or the
17 chronology and in the memorandum we filed today on Page 3
18 I ask what is the applicable chronology and on Page 4 I
19 give it and it's real simple. It was a filing that
20 indicated discovery, then there was three and a half years
21 that passed and then we were added in the same piece of
22 litigation, cause of action essentially, and during the
23 interim the statute of limitations expire. That is the
24 chronology that's necessary to resolve this motion, but
25 when they add all these other twists, then I say okay, let

1 me expand the chronology that you-all want to talk about
2 and I do that at the bottom of Page 4 and at the top of
3 Page 5 and in great respect what I have done in here is
4 outline the things I have just discussed. And they say
5 well -- so anyway, that's the chronology.

6 And their first ground is that they say we concealed
7 our identity. Now I don't know exactly the purpose of
8 doing that other than to somehow put some stink on us as
9 we come to court and try to portray ourselves as decent
10 business people and instead we're out there hiding and --
11 and so forth. If you look at Page 7 of the -- the
12 memorandum we filed today, I have collected their various
13 statements concerning our concealment, and they're at the
14 top of Page 7, and they say Criterium's existence at the
15 Gates was concealed. Criterium's employees were
16 intentionally indistinguishable from the Quality Built
17 employees. Criterium, they wrote, they -- they wore
18 Quality Built shirts and Quality Built hats. Criterium
19 did. The existence of the Criterium inspectors inspecting
20 it were completely concealed during the Gates job. Part of
21 the cast iron concealment of Criterium's presence at the
22 site comes from having Criterium employees wearing Quality
23 Built shirts and hats in disguise to disguise themselves as
24 Quality Built employees.

25 **THE COURT:** Does anybody got a picture of those hats

1 and shirts?

2 **MR. STAIR:** You know, it was not until Thursday that
3 I had the -- the knowledge of hats and, no, I don't. The
4 work was done in 2006 and '7. I cannot tell you how much
5 I would love to have a picture of that shirt. But the
6 final thing is in 2006 and '7 they intentionally disguised
7 themselves on-site at the Gates as Quality employees by
8 wearing Quality Built hats and Quality Built shirts, and I
9 would love to get you a picture of that shirt, but not only
10 do we not have a picture --

11 **THE COURT:** How -- how do you know what it says?

12 **MR. STAIR:** Well, because Ms. -- the witness who they
13 rely upon said what it said and the witness that they
14 relied upon -- and it's the page of testimony that they
15 cite and it is --

16 **THE COURT:** If she says --

17 **MR. STAIR:** Well, I think it -- it's important what
18 she says and so you've asked a very good question. If you
19 go to Page 12 of our handout --

20 **THE COURT:** Yes, sir. I've got Page 12.

21 **MR. STAIR:** Okay. What they do is they cite this
22 page for the proposition that we were hiding ourselves
23 trying to hide our identity as Criterium and so they're
24 asking the lady and they're obviously asking her -- I
25 don't know if it's their purpose to try to get that, but

1 they asked her were they conducting themselves as Quality
2 Built people and she says, and as I say in my brief, in
3 fairness to the Plaintiffs she does say in the first
4 sentence they wore Quality Built shirts and Quality Built
5 hats. She does say that. What they don't quote or say
6 -- well, actually they cite it, but what they don't quote
7 there is then she says and their business cards say
8 independent consultants of Quality Built and then she went
9 on and said, quote, they business cards actually had a
10 Criterium Engineers' logo and, matter of fact, their shirts
11 did, too. They had both the Criterium Engineers and the
12 Quality Built logos on them. Same for the hats. All of
13 the branding was co-branding, I mean, so these folks were
14 out there branding themselves as Criterium Engineers and so
15 they were not hiding as Quality people, they were branding
16 themselves, and so it doesn't really matter. I mean, the
17 truth of the matter is it doesn't matter, but my point is
18 that the idea that we were concealing ourselves is
19 absolutely contradicted by the very testimony they cite.
20 But, again, it doesn't really matter and I do wish I had a
21 picture of the shirts. But the bottom line is, is that
22 however they found out they found out in August of 2014
23 that it was Criterium and they found out all of the
24 information that was needed to get to Criterium and so
25 they should have filed a lawsuit at the time.

1 Now what they've done is they've come back and they've
2 said well, there's a statute that is in South Carolina and
3 it is Statute 15-3-30 that is an odd statute and it says
4 that if when a cause of action shall accrue against any
5 person he shall be out of the state such action may be
6 commenced within the terms of this chapter after the return
7 of such person and if the person basically stays out or
8 something, it's tolled. So it's a tolling statute that
9 would appear to indicate that an out of state defendant is
10 having a statute of limitation tolled against it until it
11 returns to the state and so they say your folks were out of
12 state, and they were, they were in Maine, your folks in
13 2014 when we looked weren't registered, I don't know if
14 that's the case or not, but they were doing business in
15 Maine lawfully so.

16 And so what the Court has done though since the
17 statute was enacted in 1870 in the case of Meyer versus
18 Paschal the Supreme Court of South Carolina has looked at
19 that statute and they -- they say in the case, they say
20 well, that statute was enacted in 1870 when people could
21 get on a horse, and they don't literally say this, but get
22 out of state, make themselves unavailable for service and
23 then later return and say ah-ha, you didn't serve -- or sue
24 or serve me within the statute of limitations and the Court
25 says that probably had a purpose. Actually they say

1 purpose, but at the time was well-served but that time has
2 changed, and then they go through the United States and
3 quote International Shoe and long-arm statute and South
4 Carolina has adopted the long-arm statute and they say in
5 light of the new revisions relating to the amenability of
6 process, in other words, the statute is intended to not
7 allow people to avoid service of process by being gone and
8 what the Meyer case says is that that is no longer a
9 problem and that thus the language in the tolling statute
10 for a defendant who is out of state describes a defendant
11 who is beyond the personal jurisdiction and process of the
12 court and not simply a defendant who is physically absent
13 from the state. So, in other words, they recognize if you
14 can be found and if you can be sued, then the statute is
15 inapplicable.

16 And that's exactly what the Court says they find.
17 Therefore, we find the tolling statute is inapplicable when
18 the nonresident defendant is amenable to personal service
19 of process and the defendant can be brought within the
20 personal jurisdiction of the court. Our holding is limited
21 to situations similar to the instant case where the name
22 and location of the defendant is known to the plaintiff.
23 So in our case because they knew who we were and because
24 they knew who we were within the statute of limitations
25 they don't get the benefit of what would be the statute of

1 1870 that's inapplicable to us and that's what the Meyer
2 case says.

3 And there are really two cases that have since dealt
4 with it. There's the Alday case, which was cited in our
5 brief, and it's a case by Judge Norton in Federal court and
6 he notes the Meyer case and he says -- as he said the court
7 -- okay. In the overview of the case, the tolling of the
8 statute was inapplicable where the nonresident defendant
9 was amenable to personal service of process and the
10 defendant could be brought within the personal jurisdiction
11 of the courts. The victim learned of the supplier's
12 existence before the statute of limitations had run, hence,
13 it was amenable to service of process. Accordingly, the
14 South Carolina code section that we just talked about did
15 not toll the running of the statute of limitations and the
16 victim did not timely commence the action. So, in other
17 words, Judge Nordan dealt with the issue of what happens
18 when you learn of the out of state defendant in the course
19 of the statute of limitations. If you learn within it,
20 then the Meyer case says that the statute has no
21 application and that is what we have here.

22 There was another case, the Tira -- Tiralango case, a
23 Supreme Court case, and it basically follows the other
24 cases and says that no, you don't get a tolling and in
25 that case I think the person filed within the statute of

1 limitations, they learned it nine days before the statute
2 was gonna expire, and they actually filed the lawsuit
3 within the period of time. They didn't serve it within
4 120 days and they were called onto the carpet by the
5 defendant and the court said, you know, that tolling
6 statute doesn't do you any good because you had the
7 opportunity to sue within the period of time and to serve
8 it within a period of time, therefore, it doesn't apply.

9 So the statute of limitations as to an out of state
10 defendant is the same as it is for everybody else and
11 certainly when you know who they are and where they are and
12 you can serve them as they did here -- I mean, they didn't
13 have a hard time serving us. They sent a certified letter
14 one day and the fella whose name was identified at the
15 beginning received it the next day and we have come into
16 court and not argued at all over anything other than the
17 passage of time and the statute of limitations.

18 Let's see. So they have another approach which is
19 well, we filed our motion to amend within the statute of
20 limitations and there should be some equitable tolling by
21 that. And they cite a case that is a Federal district
22 court case and the Federal district court case here in
23 South Carolina, I would say unpublished, but I don't know
24 if that's exactly the right term, but it's not one that is
25 written up everywhere if you can find it, and it deals with

1 a prisoner who's trying to sue a policeman and he's in
2 prison and he can't get the identity of the second police
3 officer and the first police officer won't cooperate with
4 him and give him the information and so he goes to court
5 and the court actually gives him an additional two weeks in
6 which to file the lawsuit and so he took the two weeks, he
7 filed the lawsuit and the second officer came in and said
8 whoa, this ain't right, I got served after the fact, and
9 the magistrate -- and the trial judge said look, I mean,
10 basically we gave him two extra weeks, we can't give him
11 two extra weeks and then tell him he can't have it, so
12 we're equitably tolling it so they equitably tolled that.
13 That's the first case that they cite.

14 The other two cases they cite are two cases from New
15 York. And, again, I think when you go to New York and find
16 the only two cases you can find it's indicative of the fact
17 you worked hard to find the cases that are not there. And
18 the first one doesn't have anything to do with what we're
19 talking about because it was a case where the motion to
20 amend was filed after the statute of limitations and I
21 think it got flushed for that reason. The one where the
22 statute of -- the motion was filed and it came into some
23 cause for relief. If you ever want to learn about the
24 intricacy of New York procedural law read the Perez case,
25 but I will tell you it is unique to whatever they do in New

1 York and you really have to apply it to New York if you're
2 gonna apply it at all. But even there they say that we
3 refuse -- let's see. Even that case says we similarly
4 decline to adopt the plaintiff's position that the filing
5 of the motion alone should be considered the formal
6 interposition of whatever, so they -- they reject that as a
7 concept, too. And so, again, if you're seeking equitable
8 relief, which is what they are doing on the back side of
9 this argument, you have to demonstrate that equity is due
10 and they cite the Hooper case and the Hooper case is an
11 interesting case because they actually declined to extend
12 it in that situation, but it's somebody who apparently sued
13 the thing in time and they tried to serve a registered
14 agent, and in this case the people were registered but they
15 misregistered, they misidentified themselves, and so when
16 they went and followed the lead of the registered agent it
17 was the wrong person, and then in our memorandum we filed
18 today, we then went through the horrific efforts they went
19 to find these people and they couldn't find them. They
20 hired process servers, they hired the sheriffs, they hired
21 everybody, and the court said look, these folks are, you
22 know, trying and actually I think in that case they -- they
23 still didn't get it. But the point is, is that the court
24 then says that he who seeks to apply equitable tolling
25 bears the burden of proof of demonstrating the factual

1 basis that their circumstances should get it and the Hooper
2 case says this is a rare phenomenon, we're not gonna do
3 this every day when somebody just fails to file a complaint
4 in time and if you want to do it you're gonna have to show
5 us a really uphill battle and you're gonna have to show us
6 the burden of proof that you complied with. And getting
7 back to my point where I had said I did not meet my burden
8 of proof, I'm satisfied that we met our burden of proof.
9 What has not happened is there's not been a burden of proof
10 met by them to show why equitable tolling ought to occur.
11 They got the information well in advance, they had it and
12 could have filed a lawsuit for fifteen months, they waited
13 until a month and a half before the statute of limitations
14 ran, they then did not seek an order getting it, they
15 waited five months and they ultimately got it and then when
16 they finally served the lawsuit they served it on the guy
17 who was given to them by name within fifteen months before
18 the statute of limitations at the place that he was told by
19 in Portland, Maine, and it got there one day later and it
20 was never a contest. There's no basis in law or equity to
21 relieve the fact that the case was filed against us too
22 late and we ask the Court to grant us summary judgment.

23 **THE COURT:** Mr. Luce.

24 **MR. LUCE:** Yes, Your Honor. In large part what
25 counselor argues is -- is the line of cases that began with

1 the Tollison case, a Federal district court case about
2 twenty years ago, and Plaintiff believes that two more
3 recent cases by our state supreme court are more
4 applicable. One was actually not long after Tollison,
5 True versus Montieth, and another one was four more years
6 after that, which is South Carolina Farm Bureau Mutual
7 Insurance Company versus Kelly. And the facts of the Kelly
8 case -- I call it the Kelly case, the -- there was a fire
9 at somebody's house and the Farm Bureau came in and
10 investigated the fire. They interviewed everybody, they
11 checked for arson, they checked all witnesses and they
12 concluded they couldn't prove arson, so they paid the
13 claim. A year or two later there's a second fire at the
14 same house and the same thing happens. The Farm Bureau
15 comes in, they interview everybody, they check for
16 everything, they decide they can't prove arson and pay the
17 claim. Finally, the third fire a year or two later, and
18 after the third fire the adult son of the insured who was
19 residing at the house with his parents admitted to arson of
20 the third fire and then arson of the second and the first
21 fire. But by that time the statute of limitations had
22 clearly run. If you counted the first fire as the trigger
23 date, the statute of limitations had run for the insurance
24 company to sue the insured to get its money back and the
25 court said we find that Farm Bureau did an adequate

1 investigation. They interviewed everybody. They just
2 didn't have enough facts to make the claim and they did
3 what they had to do and they found that the statute started
4 when the third -- when the third fire occurred when the son
5 confessed to the arson.

6 **THE COURT:** When do you -- when do you posit that the
7 statute began to run in this case with regard to this
8 defendant?

9 **MR. LUCE:** August 5, 2014, Your Honor, when we learned
10 this defendant existed. Prior to that date we had reviewed
11 seventy thousand documents produced by every defendant in
12 the construction lawsuit. We had reviewed --

13 **THE COURT:** Let's take that. August 5, 2014, is when
14 you knew they -- you believed the statute ran -- began to
15 run as to them?

16 **MR. LUCE:** Yes, sir.

17 **THE COURT:** Okay. So you were well within the statute
18 when you filed your complaint?

19 **MR. LUCE:** Yes, sir.

20 **THE COURT:** Okay.

21 **MR. LUCE:** And I'm gonna argue three grounds to
22 support. We briefed five grounds, but I'm gonna only argue
23 three of them and rely on the brief for anything else. The
24 -- the Plaintiff deposed twenty-two people. We deposed
25 everybody in the case, we -- we went through all of these

1 documents, we subpoenaed every one of Quality Built's
2 documents. The name Criterium does not show up on a single
3 page of thirty thousand pages that came from Quality Built.
4 We subpoenaed -- we also got all of the general
5 contractor's records. Nobody knew Criterium was on-site
6 and counselor wants to harp on the one exception to the
7 concealment that on August 5th we did learn that there may
8 have been a second logo on the shirts, but before that
9 witness said that there was co-branding she first said they
10 wore Quality Built hats and wore Quality Built shirts. She
11 then said our -- our logo is on there, too, in the second
12 half, which is contradicted by the contract that Quality
13 Built finally produced which says no, the Criterium name
14 shall not show up anywhere on this -- on this job, on any
15 job in our relationship. It doesn't --

16 **THE COURT:** What document is that?

17 **MR. LUCE:** That is the Quality Built master contract
18 with Criterium that we did file with our materials. And
19 the point of that -- I mean, counselor thinks I'm
20 disparaging someone by saying the word "concealed". No.
21 Quality Built wanted to maintain its name over everything.
22 They did not want to help a competitor become competitive
23 in the industry and they mandated that everything be
24 conducted through their name and --

25 **THE COURT:** Did you say you -- don't leave that

1 document. Where did you -- you say you filed that
2 document?

3 **MR. LUCE:** I believe we have filed that document,
4 Your Honor, and it's found at Exhibit S to the memorandum
5 in opposition.

6 **THE COURT:** Okay. And where does it say what you say
7 it says?

8 **MR. LUCE:** I'll have to look at my memorandum to get
9 my citation, Your Honor.

10 **THE COURT:** That's all right. Because I need to see
11 it.

12 **MR. STAIR:** Can I hand it up to Your Honor?

13 **THE COURT:** I'm sorry?

14 **MR. LUCE:** You do you have the page?

15 **MR. STAIR:** Yes, Page 9.1 in your section. I will
16 tell you I highlighted those two things.

17 **THE COURT:** I've got Exhibit --

18 **MR. STAIR:** I highlighted something that deals with
19 clothing.

20 **THE COURT:** Okay. Is this --

21 **MR. STAIR:** That is the page he's looking for.

22 **THE COURT:** Is this what you're referring to,
23 Mr. Luce?

24 **MR. LUCE:** Yes.

25 **THE COURT:** All right.

1 **MR. LUCE:** And, Your Honor, so then on -- once we're
2 on notice as of August 5, 2014, we're on notice that a
3 Criterium entity -- what we didn't know at the time is that
4 Criterium is a collection of franchises. It's like trying
5 to subpoena or sue Lloyds of London. It's a collection of
6 all these organizations and you need to know which one to
7 sue. Well, it turns out, Your Honor, the only two that
8 were licensed to do business in the state of South Carolina
9 had already expired. They had -- the corporate charters
10 had been dissolved and they were no longer in existence.
11 The national Criterium I refer to as what I believe is the
12 head organization had no presence in South Carolina
13 allegedly. There was no registration to do business in
14 this state.

15 And, Your Honor, the second -- going forward onto the
16 second basis with regards to the statutory tolling, the
17 Meyer case relied upon by Criterium is actually very clear
18 on Page 5 of the case. They first limit the use of the
19 statute going forward and this is, again, in 1998 and they
20 say, quote, therefore, we find the tolling statute is
21 inapplicable when the nonresident defendant is amenable to
22 the personal service of process and the defendant can be
23 brought within the personal jurisdiction of our courts.
24 Our holding is limited to situations similar to the instant
25 case in which the name and the location of the defendant is

1 known to the plaintiff. The period of limitations may be
2 tolled when that information not known to the plaintiff.
3 Whether the plaintiff had such knowledge could conceivably
4 be a question of fact.

5 So even if the Court does not agree that the
6 commencement, the original commencement, of the statute of
7 limitations is more controlled by the Kelly case than the
8 Tollison case. That statute tolls the statute of
9 limitations. Even if you want to take it back to Christmas
10 of 2012, that statute tolls the statute of limitations for
11 the period of time that the information is not known. It's
12 undisputed we did not know the location of the defendant
13 and could not find them because we didn't know the
14 defendant existed and we had no reason to even inquire.
15 The Quality inspection firm had already been identified.
16 There was no empty seat at the table. There was nothing
17 before August of 2014 giving plaintiff any reason to -- to
18 look beyond the work that had already been done. So going
19 forward, the -- counselor cites two Federal district court
20 cases trying to interpret the Meyer case, but the better
21 interpretation is our state Supreme Court in 2009 in the
22 Hooper versus Ebenezer case where it was, in fact,
23 addressing the effect of the revised construction of this
24 statute, this out of state defendant statute, albeit in the
25 service context as opposed to bringing a lawsuit context.

1 And in this case, it discusses what does it mean to toll
2 and it stated, quote, tolling refers to the suspending or
3 stopping of the running of the statute of limitations. It
4 is analogous to a clock stopping and then restarting.
5 Tolling may either be the temporary suspending of the
6 limitations period or delay the start of the limitations
7 period. It then goes on to discuss on the following page
8 whether tolling should allow a brief period of time for
9 recovery so to speak or whether the tolling should occur
10 for the period in which the plaintiff was operating under
11 whatever disability it was, whether induced by the
12 defendant or whatever it was that caused the tolling in the
13 first instance. And it cited back to a 1989 case, Hopkins
14 versus Floyd's Wholesale, and holding that the reliance
15 period, the disability period, is a more appropriate way to
16 toll the statute than the temporary tolling because that is
17 the more reliable test and it's a more objective test and
18 that's what should be used in this state. And so there you
19 have in 2009 with no adoption by our Supreme Court of those
20 two District court cases, the Federal cases, from ten years
21 before.

22 Third, with regards to the tolling once the motion to
23 amend had been filed, again, this assumes that if the Court
24 were to find the statute started in 2012 instead of 2014
25 and it further assumes that the Court find that out of

1 state tolling does not apply for any reason. We have cited
2 a local Federal court case that did -- did sanction the
3 tolling during the pendency of the motion to amend and we
4 did find two New York cases that stood for the same
5 proposition. I didn't find any that didn't stand for the
6 opposite proposition and apparently counsel didn't either
7 because they're not in the reply memorandum.

8 And with regards to the New York case Perez being
9 somehow difficult to understand, I find it very clear, and
10 it said, quote, therefore, unless a separate action is
11 filed a plaintiff seeking to add a defendant in most cases
12 must first apply for and then await judicial permission.
13 Where the motion including a proposed supplemental summons
14 and amended complaint is filed with the court within the
15 applicable limitations period but the ruling by the court
16 does not occur until after expiration dismissal is
17 inappropriate within the CPLR's literal policy as promoting
18 judicial economy and preventing multiplicity of suits. And
19 noted in the last sentence it's saying we prefer this
20 procedure than you just running out and filing a new suit
21 every time you're worried about the statute of limitations.
22 It was -- it was suppositive, if that's a word -- if that's
23 the proper word, that the motion and the order wasn't
24 necessary anyway because Quality Built would have
25 consented. Well, no, actually we -- we sought Quality

1 Built's consent, it was refused and it was refused
2 regularly over a several month period, and we'd be happy to
3 supplement some e-mails. I personally sought it orally in
4 a number of phone calls and had a number of follow-up
5 e-mails on that issue. We could not get consent, they
6 refused to consent because the amended complaint, which
7 added Criterium, also clarified the successor liability
8 claim against Quality Built and -- and they were not
9 interested in consenting to that claim.

10 Your Honor, that's it from the Plaintiff in opposition
11 to Mr. Stair's motion. Thank you, sir.

12 **MR. STAIR:** Your Honor, if I might briefly hand up
13 something.

14 **THE COURT:** Yes, sir.

15 **MR. STAIR:** The case that I am unable to pronounce,
16 Tiralango, which is a Supreme Court case, I'll hand you up
17 a copy of it and there's a footnote, and the Supreme Court
18 is noting what Judge Norton did in this Alday case, and it
19 says recently in Alday, and it gives the cite and so forth,
20 the Federal district court interpreted Meyer as
21 establishing an objective knowledge requirement stating the
22 limitation period is tolled if the defendant's name and
23 location is not known to the plaintiff and -- and the court
24 puts this in bold -- and is not able to be discoverable by
25 reasonable methods before the statute of limitation runs,

1 and so the Supreme Court's recognizing that if you get the
2 information before the statute of limitation runs, the
3 statute's simply not applicable and the situation here
4 about discovery is simply a matter in the course of
5 discovery they didn't discover for whatever reason, and I
6 think you saw from the attachment I gave you the logo
7 branding for clothing was permitted to be dual, and
8 according to the woman they rely upon it was dual as it
9 related to the logo.

10 **THE COURT:** That still -- still takes you back to
11 August 5, 2014.

12 **MR. STAIR:** Well, as to the first knowledge of
13 Criterium --

14 **THE COURT:** Right.

15 **MR. STAIR:** -- but that is well within the statute of
16 limitations.

17 **THE COURT:** Right.

18 **MR. STAIR:** And point is that if you discover someone
19 within the statute of limitations, you've got to sue them
20 within the statute of limitations.

21 **THE COURT:** But the statute of limitations doesn't
22 change just because you found --

23 **MR. STAIR:** The statute of limitations does not
24 change.

25 **THE COURT:** -- just because you found another

1 defendant.

2 **MR. STAIR:** The statute of limitations on a
3 construction defect case is the date upon which you
4 understand there is a construction defect. If it is not
5 going to be that, then there will be no statute of
6 limitations in state of South Carolina in construction
7 defect cases because they are continually learning about
8 subcontractor Jose and -- and so forth and if you have that
9 throw out the statute of limitation because every argument
10 will be well, we really didn't know about the sheathing
11 subcontractor until a month and a half later and they're
12 poor, and so that's just fact of life. So, no, the statute
13 of limitations doesn't change. The question is, is can you
14 discover the defendant within the statute of limitations.
15 Now had they not discovered Criterium until sometime after
16 December of 2015 we would be here arguing whether it was
17 reasonable for them not to have known prior to that time to
18 see if they could get the benefit of the statute. That's
19 absolutely contrary to the facts of what we've got here.

20 **THE COURT:** All right.

21 **MR. STAIR:** And so that's why the statute of
22 limitations stays the same and they knew about Criterium.
23 And the nice thing is they didn't learn about them nine
24 days before... They learned about them fifteen months before
25 or fourteen or whatever the months was.

1 And so the discussion about franchising, Criterium did
2 not do this as a franchise. I mean, they are asserting
3 it's a franchise. It's Criterium, Criterium, Criterium.
4 They served who it was, they got them served one day later,
5 we answered, we're here, but they're delayed and we ask
6 that the Court apply the statute of limitations of the
7 state of South Carolina. Thank you.

8 **THE COURT:** All right.

9 **MR. LUCE:** And I would note, Your Honor, there's no
10 suggestion in that case that the Supreme Court is adopting
11 that district court opinion. In fact, its holding in the
12 case that he just pointed out, the one neither one of us
13 can pronounce, Tiralango, the holding in Tiralango is,
14 quote, in accordance with the above authority we construe
15 the language in Meyer as requiring an objective test of
16 knowledge, i.e., the statute is tolled when the plaintiff
17 did not and could not reasonably have known the whereabouts
18 of the defendant, end quote. They did not add the clause
19 from the Federal court that said and could not have learned
20 it during the statutory period. Thank you, sir.

21 **THE COURT:** All right.

22 **MR. STAIR:** Actually I think they do.

23 **THE COURT:** I'll take a look at it. Mr. Luce, you
24 know my procedure?

25 **MR. LUCE:** I'm sorry, Your Honor?

1 **THE COURT:** I said you know my procedure?

2 **MR. LUCE:** Yes, sir.

3 **THE COURT:** Proposed orders in ten days. Thank you
4 very much.

5 **MR. STAIR:** Thank you, Your Honor.

6 **MR. BELCHER:** Thank you, Your Honor.

7 (Whereupon, the proceedings were concluded at
8 2:29 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 13th day of March, 2017.

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I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

March 22, 2017

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

State of South Carolina

Court of Common Pleas

County of Richland

The Gates at
Williams Brice

Plaintiff,)

v.)

Sinclair & Associates,
et al.)

Defendants.)

Transcript of Record
2012-CP-40-08512

July 17, 2017

Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Judge.

A P P E A R A N C E S:

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(No Exhibits.)

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P R O C E E D I N G S

* * *

THE COURT: This is Mr. Lucey's motion for reconsideration in the Gates case versus Quality Built.

MR. LUCEY: Yes, sir.

THE COURT: You may proceed.

MR. LUCEY: Thank you, sir. Justin Lucey on behalf of the plaintiff. Your Honor, essentially, even though I'm the moving party now, we're essentially still here on Quality Built's original motion that Plaintiff's claims against Quality Built should be tossed -- actually, tossed under declaratory action or as under summary judgment.

And, essentially, in so arguing their position originally, the defendant did two things; they consolidated the issues that are presented by cases such as Brown, the old successful liability case, 80 years old, with the issues presented by the bankruptcy court when a company goes out of business and sells off substantial assets to a successor corporation. And it's not -- it's not wrong for them to do that because those two sets of issues often arise together, but they are a completely different set of issues.

1 In the bankruptcy context, you have what's
2 called a free and clear order. And a lot of
3 purchasers will insert into the free and clear order
4 the purchase of the assets -- the order approving
5 the purchase of the assets, what's called free and
6 clear language. It says you're getting these assets
7 free and clear of all claims, past or future.

8 They also all go on to say -- they try to say
9 you can never be held liable for successful
10 liability, can't happen, which I would call out to
11 the Court's, -- before we get into the explanation of
12 the bankruptcy context, I would first call out to
13 the Court what the Court is probably aware of: No
14 court can ever decide the res judicata effect or the
15 collateral estoppel effect of its order. That
16 always almost must be decided by a subsequent court
17 testing the original order.

18 So any judge can say nobody can ever overturn
19 me, but that's not really the law. The law is, the
20 next court will look and see if that court had
21 jurisdiction, see if they decided the issues
22 properly, to see what effects should be given to
23 those decisions. So for a court to try and say no
24 other court can ever hold successful liability would
25 be overstepping its jurisdiction anyway.

1 But secondly, in the successful liability
2 context, the conflict has come up around the
3 nation -- around the nation as to does a bankruptcy
4 sale order freeze out any future successful
5 liability claim? And we presented to the Court at
6 the original hearing a number of cases, including
7 the South Carolina Supreme Court and the Court of
8 Appeals in the Nationwide case and the First Circuit
9 in the CYR case, and I -- we should have referenced
10 the GM case originally because it goes on all fours
11 with all these cases. And none of these courts are
12 explaining that, no, it can't.

13 And here's the two reasons why it can't: First
14 of all, for you to get a claim that's frozen out in
15 bankruptcy, you must exist, you must have -- you
16 must be able to assert a claim, you must be able to
17 identify a claim. If a claimant has no prior
18 relationship with the bankrupt debtor and could not,
19 at that time, assert a claim, his claim can't be
20 frozen out, can't be listed on the schedules, can't
21 be frozen out.

22 And they go on to explain that not only is
23 there really not a claim pending, but there's
24 several other things here. There's no way to
25 identify the existence of those people if -- if

1 there's not even a claim to identify, you can't
2 identify who owns the claim.

3 And if you can't identify who owns the claims,
4 then you can't give them due process, you cannot
5 adjudicate their claim without giving them notice,
6 due process required by law. So you're missing all
7 these ingredients, and so there's no way to actually
8 freeze out a claim by a -- they may have purchased
9 the product or the service or whatever before the
10 bankruptcy, but they may have purchased it from a
11 third party. And if they have no relationship with
12 the bankrupt debtor, you can't freeze them out
13 because it's just -- you can't do the due process.

14 Well, in the interim, since the court issued
15 its decision in this case, as the Court is aware,
16 the US Supreme Court denied cert in the GM case on
17 that exact issue, and they said, no, a bankruptcy
18 can only freeze out -- I believe it's a Section 101
19 or 105 claim. You can only freeze out Section 101
20 or 105 claim. Unknown claims can't be frozen out.
21 And unknown claims, they go on to explain slightly,
22 in part because these unknown claims, they're not
23 based on the predecessor's conduct before
24 bankruptcy, they're based on successor's conduct
25 after the purchase of the assets.

1 THE COURT: Isn't GM a fact-specific decision
2 based on those ignition locks or whatever, that
3 ignition problem that existed prior to and after the
4 free and clear language of the bankruptcy court?

5 MR. LUCEY: Respectfully, no, sir. In fact,
6 the GM court actually says we have not been given an
7 adequate record on appeal to evaluate --

8 THE COURT: They remanded it, I know that.

9 MR. LUCEY: Right. But even the -- even the
10 Second Circuit said we don't have an accurate record
11 in front of us to apply to Brown factors. And I'm
12 using the word Brown factors loosely. They have
13 their own case that's a Brown case. But the Brown
14 factors are almost universally accepted in the
15 United States with one exception, and the exception
16 is not a contraction of the Brown factors, there's
17 an exception that some states enlarge, make more
18 flexible, Brown factors.

19 So, Your Honor, in the GM case, the court
20 actually said -- the Second Circuit said we don't
21 have specific facts in front of us to know what
22 postpetition conduct they're complaining about. We
23 assume it has something to do with GM saying the
24 prior vehicles were safer. We assume that for
25 purposes of deciding this legal issue of what the

1 bankruptcy order can and cannot do. And with that
2 assumption, because the complaint is by people who
3 had no prior relationship with GM pre-bankruptcy --

4 THE COURT: Except they have the cars.

5 MR. LUCEY: But that, Your Honor, they actually
6 illustrate in a number of cases the fact that you
7 had their car doesn't mean you had a relationship
8 with GM. You might have bought it from a used car
9 dealer, and that in and of itself is not enough of a
10 relationship with GM to --

11 THE COURT: Here in GM we've got a product
12 defect in the stream of commerce which is different
13 from your case.

14 MR. LUCEY: Slightly different. But, notably,
15 that brings us full circle, actually back to the
16 case decided by the South Carolina Supreme Court,
17 which is the Simmons case. What's notable about the
18 Simmons case, yes, it took place in the product
19 liability --

20 THE COURT: Most of them. Many of them do too.

21 MR. LUCEY: Many of them do. In Simmons what
22 the big battle was in the Supreme Court was not what
23 are the ground factors and how do you apply them,
24 they were should we loosen the Brown threshold
25 requirements to add the second mere continuation

1 theory that's recognized in a lot of states where
2 you do not need to show continuity of shareholders
3 or officers. And Simmons said no.

4 In doing so, they left completely intact in
5 Brown -- and, respectfully, Your Honor, the case
6 submitted -- excuse me. The proposed order
7 submitted to the Court by the then-moving party has
8 this Court finding that Brown is a product liability
9 case. Plaintiffs would beg to differ. Brown did
10 involve the sale of the product, but it had nothing
11 to do with defective products, it had to do with if
12 whether the products were delivered or not.

13 The order was apparently paid for
14 pre-bankruptcy, and at some point there was an issue
15 that the tires had never arrived, they had never
16 been delivered. So there was a suit about the fact
17 that they're owed either tires or they're owed the
18 money. It's not a product liability case. Our
19 preeminent successful liability case in the state of
20 South Carolina, the Brown Railroad case, is not a
21 product liability case.

22 And so while the Court is correct that this
23 comes up most of the time, many times in the product
24 liability context, it's not limited to the product
25 liability context. And what's notable about that is

1 in -- when the -- in 2005 when the South Carolina
2 Supreme Court considers these similar issues in the
3 Simmons case, it does not add the product liability
4 context to Brown as being a condition of successful
5 liability.

6 Brown stands on its own 80 years later, and
7 that applies to any context in the world. If, in
8 fact, a successor company, a later company, falls
9 into any of the four Brown exceptions, be it product
10 liability or banking services--

11 THE COURT: Which of the prongs are you --

12 MR. LUCEY: Sir, we're the third one.

13 THE COURT: Most of them are relying heavily
14 mere continuation prong?

15 MR. LUCEY: Absolutely, Your Honor.

16 THE COURT: That is where you are?

17 MR. LUCEY: That is us. And, Your Honor, once
18 the court, on their motion for summary judgment,
19 gets into the mere continuation issue, we presented
20 the Court with evidence of the defendants'
21 postpetition conduct, that they -- even though that
22 they had only been in business two years, that they
23 claim to have been in business 14 years, they claim
24 to have handled 2,000 litigations, they took credit
25 for everything the prior company did, we're not

1 suing because of something the prior company did,
2 we're suing because Quality Built, LLC, the new
3 company's, voluntary assumption of the prior
4 company's attributes. In fact, one of the biggest
5 things they advertise on their web page is that
6 Quality Built, LLC, is ISO certified. It's not.
7 ISO certifies entities. According to them --

8 THE COURT: Which one was?

9 MR. LUCEY: Sir?

10 THE COURT: Which one was?

11 MR. LUCEY: The predecessor company --

12 THE COURT: Was ISO certified?

13 MR. LUCEY: Correct. And we put three years of
14 postpetition web pages from the new entity in the
15 materials we filed with the court where they claim
16 they're the ones that are ISO certified, they're the
17 ones that have been doing these inspections since
18 1994. And, in fact, we have the continuity of
19 officers, Beth Margolis, who is still the president,
20 and everything she's been doing these 15 years --

21 THE COURT: And you had insurance?

22 MR. LUCEY: Sir?

23 THE COURT: And you had insurance?

24 MR. LUCEY: Yes, sir. And, Your Honor, we have
25 continuity officers, we have some continuity of

1 ownership, and we have complete continuity of
2 operations --

3 THE COURT: Wait a minute. What about
4 ownership?

5 MR. LUCEY: Ownership: Beth Margolis who is
6 fifth-percent owner of the predecessor is
7 five-percent owner of the successor. A gentleman
8 named Stir with Stir Materials, he was a 50-percent
9 owner of the predecessor, he's a five-percent owner
10 of the successor. They're both the sole executive
11 officers of the successor. There is an additional
12 board member of the successor -- and, yes, Stir
13 eventually gets fired years later. But at the time
14 of the transition, the officers seamless -- in fact,
15 in their web page, they say seamless transition.

16 So we have in the Nationwide case, Your Honor,
17 there is apparently no continuation of ownership.
18 So for a while we've had Brown which says one of the
19 ways you show mere continuation is you show the
20 continuity of the business, shareholders, or owners.
21 And nobody has ever known in our state, at least
22 here it's me, how much continuity of ownership do
23 you need? Would five percent qualify or does it
24 have to be 95 percent? That has just never been
25 decided until the Court of Appeals decided

1 Nationwide where there is no continuity of
2 ownership.

3 So -- and one of the reasons for that, Your
4 Honor, as it's been shown by our courts, that
5 control of a company through officers can equate to
6 ownership. If you're taking all the money out in
7 your salary and you've got a bonus plan set up,
8 you're taking out bonuses, you don't need to put
9 your name on the shareholders certificate. And you
10 have equitable ownership of the company, you just
11 don't have the share certificate.

12 So that's why there still is balancing, this
13 case-by-case examination, is there sufficient
14 continuity of enterprise, management, and ownership?
15 And the word or is in there, and Nationwide uses
16 that or and affirmed the trial court with absolutely
17 no ownership whatsoever. And the Court may recall
18 that the original Nationwide bankruptcy issue went
19 up to the Supreme Court and they said, no, that
20 claim is not frozen out, you have a successful
21 liability. And they explain it depends on the
22 successor's postpetition conduct; you're not suing
23 over what the first guy did, you're suing over how
24 the second guy operated this allegedly new entity.
25 Was it in fact new or not? It's how they operated

1 it.

2 And so once we get to the Brown factors,
3 Plaintiffs respectfully submit that they have
4 submitted adequate evidence of continuity of
5 operations, shareholders, and management such that
6 there's at least a question of fact. We believe
7 it's overwhelming, but there's at least a question
8 of fact.

9 And I would note to the Court that -- also that
10 the movant at that time was stressing to the Court
11 that there was no continuity in the inspections that
12 got performed at Gates. We'll start with, there was
13 continuity, there was nine months of inspections,
14 but, secondly, that's not the test; it's not whether
15 you continue the same job or you finish the
16 automobile that was in the process of production at
17 the time, it's whether you continue the business
18 enterprise. And according to their own words,
19 Quality Built, LLC, has been a seamless continuation
20 of the predecessor's enterprise.

21 I'm happy to answer any further questions the
22 Court has. I believe that the -- at a minimum, we'd
23 want to correct the reference in the order to Brown
24 being a product liability case. There's a factual
25 finding in the order that Quality Built, LLC, would

1 not have purchased these assets had they known
2 they'd expose themselves to successor liability.

3 Plaintiffs respectfully suggest there's no
4 evidence in the record to support that factual
5 finding, and they did not submit an affidavit that
6 would support that factual finding. And the --

7 THE COURT: You have one other -- oh, yeah.
8 Your motion says that the Court cannot address all
9 of the issues.

10 MR. LUCEY: Yes, sir. And we actually set
11 forth those issues in the motion. And once --
12 obviously, once the Court rules one way or the other
13 our principal cause, we actually are seeking to have
14 the order reversed. But once the Court rules on our
15 principal cause, I think that Mr. Belcher and I can
16 make sure that the Court does address each of those
17 other findings.

18 But the other findings should -- we believe
19 that the Court should confirm this to a lack of
20 prebankruptcy relationship between us at the time of
21 the petition. We didn't know our claim existed, we
22 didn't know that Quality Built had ever been on our
23 job site. They were hired by a builder that our
24 predecessor had a contract with. We're two or three
25 layers removed from having any direct relationship

1 with Quality Built prepetition. We're not a Section
2 101 Subprint 5 claimant because of that, and we
3 believe that it should be --

4 THE COURT: You're not claiming against the
5 bankruptcy proceeds either?

6 MR. LUCEY: Right. We're not an in rem
7 claimant, we're an in personam claimant.

8 THE COURT: Thank you, sir.

9 MR. BELCHER: Yes, Your Honor. Alan Belcher on
10 behalf of the defendants in the case.

11 THE COURT: One of the typical arguments
12 opposing a reconsideration is you did it right the
13 first time, leave well enough alone. Mr. Lucey
14 doesn't allow you to do that, so how do you proceed?

15 MR. BELCHER: Well, while I'd agree with the
16 Court's position on that, I would also say that most
17 of what we've heard here today is exactly what we
18 heard a couple months ago as far as trying to
19 distinguish Brown and those factors and where
20 Quality Built tried to -- where they're trying to
21 fit Quality Built into those factors. I think
22 that's all been decided and has been decided well.

23 I would say that the Brown case -- even in the
24 order, the Brown case is distinguished as not being
25 a products liability case. The Brown case is the

1 failure to deliver tires while the defendant in the
2 case was straddling their bankruptcy status as a
3 bankrupt or as a discharge bankrupt entity.

4 But the thing about Brown, and I think what
5 makes it almost identical to what we're dealing with
6 in the GM case, is that those claims against GM, the
7 old GM in that case, and the claims in the Brown
8 case, were known claims that predated the filing of
9 the bankruptcy.

10 The GM claim -- the order in the GM case goes
11 through and says that GM was testing these vehicles
12 in 2002. This was not a new issue, this was not
13 something that new GM was blind sided with. These
14 cars continue to be out in the stream of commerce,
15 they continue to be sold with these faulty ignition
16 switches; old GM knew it, new GM knew it. That's
17 not what we're dealing with here.

18 Again, we're dealing with a complete separation
19 in the continuity of the business here. The
20 continuity distinction that your order makes and
21 that we made at the hearing is that the job that
22 Quality Built, the predecessor, was doing for the
23 Gates at Williams Brice had come to a conclusion, it
24 was done, there was nothing more; there were no
25 warranties, there were no potential recalls for

1 defective products or defective materials. The job
2 was done.

3 The job was done, the company fell into
4 financial turmoil, certain assets, including
5 goodwill, which I believe would entitle them to put
6 some of their experiences as the prior company on
7 their website, were purchased out of bankruptcy
8 pursuant to the order. And there's a free-and-clear
9 clause or language in the order that says that these
10 things are being purchased free and clear of any
11 past or future liability.

12 So I think that to the extent that we're here,
13 and I think the Court asked us to come in here and
14 argue how the GM case fits into the fact pattern --

15 THE COURT: In any way --

16 MR. BELCHER: To the extent --

17 THE COURT: -- change my order.

18 MR. BELCHER: Yeah. And I don't think that
19 case is in any way distinguishable that it would
20 change the rationale behind the order in the first
21 place.

22 THE COURT: All right.

23 MR. LUCEY: Briefly, Your Honor, in response to
24 the suggestion of the case -- that the GM case
25 doesn't change anything, the United States Supreme

1 Court is the ultimate federal court interpreting the
2 bankruptcy; the federal court, laws of this state.
3 And it says in the appendix of the petition for cert
4 rejection, page 34, the -- this is -- the Supreme
5 Court refuses to reverse this statement by the
6 Second Circuit. "Third, however, the independent
7 claims do not meet --"

8 THE COURT: Tell me what you're reading from.
9 Do I have it?

10 MR. LUCEY: Yes, sir.

11 THE COURT: I have the order. It's page what?

12 MR. LUCEY: APP-34..

13 THE COURT: Let me go to it. It's talking
14 about the free and clear order --

15 MR. LUCEY: Yes, sir.

16 THE COURT: -- provision.

17 MR. LUCEY: And it's the third paragraph on
18 that page that starts with the word third.

19 THE COURT: Yes. You've got it highlighted.

20 MR. LUCEY: "Third, however, the independent
21 claims did not meet the codes limitation on claims.
22 By definition, independent claims are based upon new
23 GM's own post-closing wrongful conduct. Though the
24 parties do not lay out the whole universe of
25 possible independent claims, we can imagine that

1 some claims involve misrepresentations by the new GM
2 as to the safety of the old GM cars. These sorts of
3 claims are based upon new GM's post-petition conduct
4 and are not claims that are based upon a right of
5 payment that arose before the filing of the petition
6 or that are based upon pre-position conduct."

7 And, Your Honor, we believe that's us. We're
8 not in the product liability context, but we are
9 suing based upon their post-petition conduct and how
10 the Brown factors apply to them, and the ultimate
11 federal court has now ruled on how our bankruptcy
12 courts' free and clear orders do not reach past the
13 petition paper. Thank you, sir.

14 THE COURT: Anything further?

15 MR. BELCHER: And just to be clear, I think
16 what the court is saying there was that these were
17 blatant claims known by old GM and concealed by new
18 GM which would constitute ongoing conduct to all of
19 these potential claimants and, therefore, the new GM
20 is liable, not so much for what the old GM did, but
21 for concealment of what the old GM did.

22 THE COURT: Is there an application to that
23 effect?

24 MR. BELCHER: Well, I'm just reading the same
25 page that says that the contingency standing in the

1 way is old GM's telling plaintiffs that the ignition
2 switch defect existed. In other words, old GM's
3 creation of the ignition switch defect clearly gave
4 rise to these claims, even if the claimants didn't
5 yet know.

6 But what they're saying is that the
7 continuation of the conduct there by new GM did not
8 do anything about these claims until a certain time
9 when they started making recalls for claims --
10 recalls for defects that they knew to exist before
11 but did not advise the potential claimants of the
12 defects.

13 In this case, what Quality Built did out there
14 came to a conclusion. There was no attempt to
15 conceal or not attempt to even do any research on
16 whether or not these services that they had rendered
17 on The Gates' project was in any way defective or
18 negligent or any services that weren't completed,
19 and that's why it doesn't fit within the same -- the
20 new-GM/old-GM standard.

21 THE COURT: Okay. All right, counsel. Let me
22 ask you to submit proposed orders within ten days.
23 Particularly, Mr. Lucey, it's quite a burden for
24 you, but, I mean, you got the hill to climb.

25 MR. LUCEY: Yes, sir.

1 THE COURT: All right. Thank you.

2 MR. CRANSHAW: Good morning, Your Honor.

3 THE COURT: Good morning. You are?

4 MR. CRANSHAW: My name is Brad Cranshaw. I
5 represent T&M Concrete. And I think there's a
6 separate motion first.

7 THE COURT: Oh, you mean the --

8 MR. CRANSHAW: Summary judgment motion.
9 Whichever you'd like, Your Honor.

10 THE COURT: You're T&M Concrete?

11 MR. CRANSHAW: I am, Your Honor.

12 THE COURT: I thought that -- that's the motion
13 to sever.

14 MR. LUCEY: It is.

15 MR. CRANSHAW: Yes, Your Honor. I'm early.

16 THE COURT: Oh, I'm sorry. My clerk says he
17 scheduled them both at the same time.

18 MR. CRANSHAW: Yes, sir.

19 THE COURT: Well, let me back up. For the
20 record on that issue, is there any objection? Did
21 you file anything?

22 MR. CRANSHAW: I do object. We've not filed a
23 brief. I understand a brief was filed by
24 Plaintiff's counsel --

25 THE COURT: Right.

1 MR. CRANSHAW: -- this past Friday.

2 THE COURT: I just assume that it was not
3 contested.

4 MR. CRANSHAW: We do contest it. I'd like to
5 be heard on the matter, if Your Honor is open to
6 that.

7 THE COURT: Any problem with that, Mr. Lucey?

8 MR. LUCEY: No, sir.

9 THE COURT: All right. Fine. We'll get to
10 that then.

11 Mr. Wilkes?

12 MR. WILKES: May it please the Court, Your
13 Honor. I'm Mike Wilkes. I represent Sinclair &
14 Associates in this case. We have moved for summary
15 judgment because the Sinclair & Associates' drainage
16 plan for this project was not followed. Your Honor,
17 this is the Gates condominium on Shop Road.

18 THE COURT: Very familiar with it.

19 MR. WILKES: All right. I thought so. And
20 there is a --

21 THE COURT: I heard on your motion to
22 dismiss -- I mean, did you file a motion to dismiss?

23 MR. WILKES: I filed a motion for summary
24 judgment because --

25 THE COURT: No. I mean, prior to this.

1 MR. WILKES: I filed a prior motion to
2 dismiss --

3 THE COURT: Right.

4 MR. WILKES: -- in conjunction with a motion to
5 strike an affidavit. It was a procedural motion.

6 THE COURT: Okay. Well, anyway, I ruled on
7 that.

8 MR. WILKES: Yes, sir. The issue of proximate
9 cause because the plans weren't followed was not at
10 issue for the Court.. So if I may address that
11 background?

12 THE COURT: Oh, sure.

13 MR. WILKES: Thank you, Your Honor. So the
14 proceeding matter, the plaintiffs supported their
15 first complaint against Sinclair & Associates, which
16 is civil engineering firm, with an affidavit from a
17 Mr. Whitlock. Mr. Whitlock eventually testified
18 that he wasn't qualified to testify about civil
19 engineering matters or intended -- or didn't intend
20 to in this case.

21 And after that -- or I won't get the timing
22 exactly right, but later they hired a Mr. Castles
23 who is an engineer who also claimed, you know,
24 professional negligence. And we had moved to strike
25 the Whitlock affidavit because of his admission, and

1 the Court simply found, well, there's a Castles
2 affidavit in the record now and it alleges various
3 professional negligence, so I am not going to
4 dismiss the complaint under the affidavit of merit
5 statute for lack of an adequate affidavit to support
6 the claim. So that was a procedural motion.

7 We've now performed discovery in the case and
8 we have learned -- just the punchline is we've
9 learned that 80 percent of construction, the
10 owner-developer team decided to pipe the water from
11 the edge of the building about a hundred feet or so
12 to the perimeter behind the building next to the
13 railroad track and have the water come up in some
14 grates and basically erupt into the dog walk. And
15 on top of that, they added a board at the bottom of
16 the fence that's between the railroad and the dog
17 walk which dams up.

18 So, not surprisingly, you take the water out of
19 the downspout and you shoot it out about a
20 hundred-foot leader, it then comes up through a
21 grate at some, I'm going to guess, about 30
22 locations in the dog walk, and then it can't get
23 through the fence because they've added a board that
24 wasn't supposed to be at the bottom of the fence.
25 It's not surprising that water is sort of dammed up

1 there. So that's the summary position, Your Honor.

2 One of our exhibits I'd like to hand up --

3 THE COURT: I have your memo with the past
4 exhibits.

5 MR. WILKES: If I can could show you a little
6 bit larger diagram.

7 THE COURT: All right. Sure.

8 MR. WILKES: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. WILKES: So, Your Honor, this is the
11 grading and drainage plan. And you'll see the
12 outline of the building. You'll see Shop Road is up
13 at the top, you'll see the dog-walk at issue is
14 along the perimeter basically where the railroad
15 track is on the back side, and you'll see the edge
16 of the building is outlined here. And the issue
17 with respect to Sinclair is the condition of the
18 dog-walk.

19 Sinclair contracted with the developer. The
20 contract provided that we would not design a
21 detention system unless asked to or paid to or
22 directed to. Ultimately, of course, our design was
23 permitted, that's why construction was allowed to
24 begin on this civil side of things. We also
25 contracted that we would not perform construction

1 administration. So we had no construction
2 administration responsibility.

3 What ultimately occurred, Your Honor, is that
4 at about 80 percent construction -- and I'm showing
5 Your Honor sheet A 4.26 which is a roof plan, Your
6 Honor. And I've highlighted on the roof plan, and
7 you'll see all around the edge of the building, all
8 of these different downspouts that come out. And
9 the water is supposed to come out, hit on the splash
10 block, flow across these grass yards, which they're
11 grassed in, eventually hit the dog-walk, and go
12 under the fence, a sheet flow design.

13 Well, what happened is at 80 percent
14 construction, without the advice of my client, they
15 added leaders from every one of these downspouts out
16 to the dog-walk into a box. So they took the water
17 from the downspout, they got a box under it, they
18 collected the water, it goes into a corrugated pipe,
19 it goes out here to the dog-walk, every one of
20 these, and then there's a grate, basically another
21 box out there, in the dog-walk. So all around here,
22 this is the dog-walk. And, of course, this is where
23 the fence is.

24 So, not shockingly, these owner-developer --
25 the owner-developer team, they decided how to --

1 they wanted to -- they wanted to rewrite, they
2 wanted to redesign this, they wanted to --

3 THE COURT: Without your knowledge?

4 MR. WILKES: Without our knowledge.

5 THE COURT: No notice?

6 MR. WILKES: No notice whatsoever, Your Honor.

7 And I will add to that, of great importance on page
8 6 of our brief, Your Honor, we had written down in
9 2006 and we specifically advised them, again, page 6
10 of our brief: As we are building the property
11 lines, we cannot pipe the downspouts and discharge
12 them at the property lines producing a concentrated
13 flow. We do not have any existing condition.

14 THE COURT: Page 6 of your brief?

15 MR. WILKES: Page 6 of our brief, Your Honor.

16 And in the quoted material, first sentence.

17 THE COURT: Okay. I got it. Go ahead.

18 MR. WILKES: So not only did these men -- these
19 men directly violated what we told them they could
20 not do. We told them, you can't take that water
21 from the edge of the building and take it out here
22 to the property line and discharge it. I mean, it
23 makes common sense. And this is the professional
24 engineer telling the owner-developer team you cannot
25 do that, so that's why we have this sheet-flow

1 design. There is -- because -- and this was about
2 80-percent construction when these changes were
3 made. We didn't know about that. It is something
4 that the owner-developer elected to do. We didn't
5 have any duty to determine that they had made this
6 change in the planning. I think all the experts
7 would agree this -- the new design would not have
8 been permitted. That's not really the issue because
9 they didn't -- it wasn't permitted, this wasn't a
10 permitted design. They did not ask us for advice,
11 they did not ask us to change our plan or figure out
12 a different way to do it.

13 The plaintiff -- and I'll review some of the
14 plaintiff's citations in a moment. But the -- we've
15 cited a number of cases that make it clear that if
16 the design professional's design is not implemented,
17 it cannot be the proximate cause of any condition at
18 issue. And this is -- if you think about it, what
19 is the jury going to think about in this case? They
20 don't really need to decide anything in this case.
21 The owner-developer team admits they made a change,
22 and all we have is a reference in the plaintiff's
23 brief that, well, did you consult with Sinclair?
24 Well, I don't remember any details, we didn't have
25 much contact with Sinclair, I imagine we did.

1 Well, I imagine we did is not enough to take
2 this case to a jury. And that's what this case is
3 about. They made a change, we didn't know about it,
4 we had no duty to know about it, so we didn't have
5 any actual knowledge, we had no construction,
6 administration, and responsibility. We had survey
7 teams out there doing other unrelated work. They
8 weren't out there to see whether the drainage system
9 had been installed as designed. So this is a case
10 that a jury doesn't need to hear with respect to
11 Sinclair. Sinclair's design wasn't implemented, its
12 design cannot be the proximate cause of the current
13 condition of the dog-walk when it wasn't
14 implemented. And this is clearly a material -- this
15 is not a matter of degree. I mean, this is
16 significantly different and, in fact, it is contrary
17 to specific advice we had given the owner-developer
18 team earlier.

19 THE COURT: Just as a factual matter, you say
20 your people were out onsite doing surveying for
21 other -- on other issues, yet all this work
22 installing these drain lines seem to have caused
23 somebody to say this is not what we designed, what
24 we originally designed in terms of the sheet flow of
25 the water. I mean, is that -- just educate me

1 factually.

2 MR. WILKES: Well, sure. There's nothing in
3 the record -- there's nothing anywhere in the
4 records that have been produced in this case,
5 thousands and thousands of records, our file,
6 owner-developer file, HOA file, there's nothing in
7 the record to show that we actually knew they were
8 making this change. I understand what you're
9 saying. I don't know how long it took them to put
10 these leaders underground.

11 But what happened -- well, I don't know how
12 long it took them to put the leaders underground.
13 We sent a survey crew out there at the very end
14 after construction looking at other matters, not
15 asked to go out there and identify civil drainage
16 issues that. Was not something that --

17 THE COURT: That had differed from your plans?

18 MR. WILKES: Pardon?

19 THE COURT: That had differed from your plans.

20 MR. WILKES: Correct. So there's no -- there's
21 no evidence that we had actual knowledge of the
22 change. We had no construction administration
23 duties, so we had no duty to learn this and,
24 therefore, we had no constructive knowledge under a
25 duty factual scenario.

1 One of the cases we cited to you in our brief,
2 Your Honor, is one where they didn't -- well, all of
3 them they didn't follow the plans. One of them they
4 followed the plans for a while, like in this
5 instance, but then they deviated. That's exactly
6 what we have here: They followed the plans for a
7 while, they got to the point where the water coming
8 out of the downspout was disturbing the sod that
9 they had put down. Well, that's a construction
10 issue that they needed to address until the sod had
11 taken and was able to accept the sheet flow. That's
12 at 80 percent construction they decide to address
13 what is largely a construction issue and change the
14 final design to be a point discharge erupting into
15 the dog-walk during rains and then unable to flow
16 off the property because they had basically taken
17 the fence down to the bottom and then dammed it up.

18 So in South Carolina we can't hold a
19 professional responsible for a condition that
20 doesn't relate to his own design. Now, to the
21 extent that Castles -- you know, he has a lot of
22 different theories, but we'll just take the general
23 proposition. He contends our design wasn't what it
24 should have been.

25 THE COURT: To begin with.

1 MR. WILKES: To begin with. Well, I think the
2 analysis that I have just been through is the
3 correct analysis. But if Your Honor wants to give
4 that any credence, which you do at this stage, that
5 they have -- of course their says that it is not
6 what it needs to be. This change amounts to an
7 intervening or superseding cause. They've created a
8 new system. So I say the first analysis is our work
9 cannot be the proximate cause because it wasn't
10 followed.

11 Another analysis is, okay, there's alleged
12 negligence based on plaintiff's expert's testimony,
13 but that negligence can't be the proximate cause
14 because there's an intervening and superseding cause
15 here, which is that the owner-developer designed its
16 own system, took the water out in the dog-walk, let
17 it erupt there, and let it dam up against the wall
18 after adding a board to the bottom of the fence that
19 we also didn't know about and didn't have a duty to
20 know about. But --

21 THE COURT: Was that board ever removed?

22 MR. WILKES: Has not been to my knowledge, Your
23 Honor. Thank you, Your Honor.

24 THE COURT: Mr. Lucey?

25 MR. LUCEY: Yes, Your Honor. And I want to

1 augment counsel's description of the facts. But
2 before doing so, I'd like to bring to the Court's
3 attention that Sinclair & Associates tried to get
4 the plaintiff's expert to go there in his
5 deposition, and he disagreed on everything this
6 Court has just heard. And we've filed that
7 material.

8 That alone, regardless of anything further I
9 say today, creates an issue of fact sufficient to
10 feed their motion for summary judgment.
11 Specifically, Your Honor, their design was
12 augmented. In fact, they -- I have some of the
13 exhibits. I want to make sure the Court has a paper
14 copy of what I filed Friday.

15 I want to walk the Court through -- briefly
16 through several exhibits. And when I do that, Your
17 Honor, the Court will see that Pearson, the site
18 superintendent, said, yes, we have our design,
19 Sinclair was the environmental, we had a plan from
20 them, we implemented the plan.

21 Well, what actually happened, Your Honor, is 80
22 percent through the job, during a required company
23 inspection -- they had these monthly inspection
24 reports they had to submit to corporate -- the site
25 inspector writes: Drainage, flooding, we have a big

1 problem. And I'll show the Court those exact words.

2 They notice that in March of 2007.

3 THE COURT: Who noticed that?

4 MR. LUCEY: The inspector, Mike Pearson,
5 assistant site superintendent.

6 THE COURT: He's the site superintendent?

7 MR. LUCEY: Yes, he is.

8 THE COURT: For the contractor?

9 MR. LUCEY: For the contractor.

10 THE COURT: Not the property?

11 MR. LUCEY: Correct. And, Your Honor, by March
12 of 2007, all the parties are working on the insides
13 of the building and, perhaps even putting in the
14 pool by now. These buildings are substantially
15 complete.

16 THE COURT: Roof's on?

17 MR. LUCEY: Roof's on.

18 THE COURT: Water is coming down?

19 MR. LUCEY: Water is coming down. And that's
20 the problem and that's what Pearson testified in
21 what we've submitted. And I'll show the Court
22 briefly. He says: When we saw the problem that the
23 system was creating, it was too late to change
24 anything. The building had already been constructed
25 and had taken up too large of a footprint on this

1 property. The there was nowhere to put a retention
2 pond. That horse was out of the barn.

3 So they attempted to mitigate. They had a
4 legal obligation to mitigate, they attempted to
5 mitigate. And I think I may have heard counsel
6 misstate that they ran some of these pipes a hundred
7 feet. They did not. These are very short pipes.

8 Originally, the landscape architect had these
9 four-story downspouts just splashing onto a piece of
10 concrete on the bottom when they hit the ground, and
11 that was causing erosion of the ground right
12 approximate to the slab, which is a no-can-do in
13 construction, you've got to get erosion away from
14 the slab.

15 So they tried piping the water further back.
16 And the Court has heard this dog-walk thing before.
17 It is, in fact, the owners' dog-walk, and it's a
18 linear park behind the building. It's supposed to
19 be for pets and it's intended for pets to do their
20 thing there, number one and number two.

21 And that creates a huge problem because with
22 this ongoing flooding all the time, you've actually
23 got sewage back there, you got water and floating
24 sewage. And so it is a huge problem to these people
25 and it gets very deep. So, yes, at 80 percent,

1 they're saying the washout, they try and pipe the
2 water out further to mitigate, it does not work.
3 Why? Because we're not really here talking about
4 downspouts and piping the water a few feet further
5 away from the building, what we're here is about a
6 civil engineer's design to tell the City of Columbia
7 to permit this project using sheet flow because he
8 represented to the City of Columbia, one, the
9 direction of the water flow would not change, and,
10 two, the quantity of the water flow would not
11 change. They had this theory that since the
12 property was mostly covered by impervious structure
13 to begin with -- parking lot and buildings -- and
14 they were going to have slightly less impervious
15 structure, that everything was going to be
16 hunky-dory. They missed several things in that
17 analysis, according to our expert.

18 Now, a jury will ultimately decide. What they
19 missed is several things. First of all, there was a
20 huge amount of sod compressed clay under the old
21 warehouse. And, as part of construction, the
22 stakeholders decided to break the clay up and
23 distribute it throughout the property because they
24 didn't want these clay boulders under the new
25 buildings. Well, that created a new impervious

1 surface across the whole property. It's almost like
2 a parking lot. Water doesn't go through clay, and
3 his client knew. And they never advised the client,
4 muck that clay out of the dog-walk before you build
5 it or do something else, never advised them. They
6 were completely aware of the impervious clay had
7 been spread back throughout the property.

8 Secondly, Your Honor, our expert testifies that
9 the construction of the buildings did in fact change
10 the water flow off the property, the direction. The
11 only thing that serves on this property in the front
12 is a ditch. So if you're going to do this sheet
13 flow without doing adequate piping for your own
14 storm water drainage -- originally the water, most
15 of the water, was going to go in that ditch. These
16 properties, this beautiful chart we have up here,
17 changed the water flow on the property. And they
18 have all of the downspouts and gutters coming out
19 the back of the buildings all onto the dog-walk,
20 nothing or almost nothing coming down into the
21 interior courtyard. So they shifted all this water
22 flow to the backyard.

23 And while our expert will tell you that their
24 design didn't change the amount of rain coming onto
25 the property, which would be obvious, it did change

1 the velocity of the water traveling on the property
2 because it was coming down in four-story downspout.
3 So they changed enough of the characteristics, they,
4 nonetheless, certified -- the defendants certified
5 to the City of Columbia that the volume of the water
6 and the direction of the water would not change.

7 That's how they got the permit, it didn't work..

8 The plaintiffs went to mitigate the problem.

9 The testimony from the -- from Pearson -- yes, he
10 does not remember who he talked, he does not
11 remember a specific conversation, but he says we
12 were constantly in contact with civil -- civil was
13 Sinclair -- and he believes that they discussed it
14 with civil. Yeah, he's a site superintendent, he's
15 a contractor, so he uses words like imagine instead
16 of believe. That's what he does, that's what
17 contractors do. But he believes that he talked to
18 Sinclair & Associated.

19 With regards to notice, notice ultimately
20 actually only goes to the aggravation of the problem
21 and of the defendant's liability. We had to
22 mitigate that no matter what. But, yes, they did do
23 an as-built survey afterwards, they were certainly
24 aware of it. In fact, they were also aware --

25 THE COURT: Slow down. Who did an as-built?

1 MR. LUCEY: Sinclair & Associates did an
2 as-built survey at the end of the job. I'll show
3 the Court the invoice in just one second.

4 THE COURT: Where is it?

5 MR. LUCEY: The survey?

6 THE COURT: Yes. This is basically a flat
7 site.

8 MR. LUCEY: Right. The survey -- this was -- I
9 believe they were measuring the setback, so they had
10 to go to the property boundary and measure from the
11 boundary --

12 THE COURT: I'm just --

13 MR. LUCEY: -- to the edge of the building,
14 around the entire building.

15 THE COURT: I'm just looking at the
16 topographical notes on this grading plan. It looks
17 like it's flat as a pancake.

18 MR. LUCEY: It is flat, Your Honor. The center
19 of the project is about 200 feet -- this is how flat
20 it is -- the bottom of the ditch out front is 197.
21 The bottom of the courtyard supply that goes into
22 that ditch is 196. This is very flat. So you
23 imagine four acres with only four foot of fall at
24 the bottom of a ditch is, yes, very flat, I would
25 say.

1 Your Honor, if I can direct the Court's
2 attention to Exhibit C dependent to our motion. I
3 dog-eared so I could direct you there quickly. This
4 is the invoice for the as-built survey. This is
5 the -- about the 6th page is an invoice, number
6 5873, Exhibit C.

7 THE COURT: Invoice number what?

8 MR. LUCEY: Invoice No. 5873 at the top
9 right-hand corner, dated August 13th, 2007.

10 THE COURT: What's the page number?

11 MR. LUCEY: The Bates stamp is 2677 at the
12 bottom right.

13 THE COURT: I've got it.

14 MR. LUCEY: The as-built survey, this invoice
15 is August 13th, 2007. The condos got their COs in
16 early July 2007. And as of this date, I believe,
17 there's a number of condos already sold. And it's
18 show ing them doing an as-built survey on the
19 property. If I could direct the Court to Exhibit F.

20 THE COURT: What's the significance of the
21 as-built survey done by Sinclair?

22 MR. LUCEY: It shows that they were on the
23 property at the conclusion of the project --

24 THE COURT: Okay.

25 MR. LUCEY: -- and it correlates with Pearson's

1 testimony that he is in constant contact with
2 environmental on issues on the property.

3 THE COURT: What did the -- was any concern
4 raised when the as-built was produced?

5 MR. LUCEY: No, sir, not as to this issue. He
6 believes he raised the issue of the drainage to
7 Sinclair, but he does not recall the details. But
8 he does say that he was in contact with
9 environmental on all the site issues and they
10 implemented their plan.

11 THE COURT: Okay.

12 MR. LUCEY: And then going to Exhibit F,
13 please, sir, it should be dog-eared, this is the
14 drainage calculation that the defendant Sinclair
15 provided to the City of Columbia to get this job
16 permitted which our expert testifies is wrong.

17 THE COURT: But permitted?

18 MR. LUCEY: The calculation is wrong, but he
19 got the permit by putting that calculation with the
20 permit.

21 If we go to Exhibit H, the third from last
22 page, Bates stamp 15006.

23 THE COURT: Yes.

24 MR. LUCEY: Item C in the middle under
25 landscape and irrigation has a checklist item for

1 "walk property during heavy rains to look for
2 potential drainage problems both around buildings
3 and paving areas, look for pooling of water." The
4 hand written notation next to it is "we have big
5 problems." That's is an April 11th, 2007 project
6 inspection.

7 THE COURT: By your inspector? By your
8 superintendent?

9 MR. LUCEY: This is the assistant site
10 superintendent Sonny Harmon. It is the
11 developer-builder's site superintendent. And that
12 correlates with his testimony that the project was
13 80 percent complete before they realized the
14 drainage was not working.

15 If we go to Exhibit I, this is two pages of
16 excerpt from Mr. Pearson, one of the other site
17 superintendents, in fact, one of the main site
18 superintendents. And at page 432 of his deposition,
19 line 6: The project was approved, 80 percent
20 complete, before any storm water issues came up?

21 Answer: That's when we questioned, you know,
22 if the storm system was adequate or what the plan
23 of the storm system.

24 Did you ever question any of the design
25 professionals on that issue?

1 Answer: I'm sure that Ron and I consulted with
2 the environmental, but I can't -- but I can't say
3 specifically what conversations we had or
4 whatever.

5 Have you ever heard of a firm called Sinclair &
6 Associates?

7 They were our environmental that handled our
8 site work and stuff.

9 If we go to the top of the next page at page
10 433, line 2, he says: "We had our design and we
11 built it as such." That's referring to the Sinclair
12 design.

13 At line 7 he goes on to explain why it was so
14 difficult to try and do a mitigation at that time.
15 At line 10 he says: "But at that point, you know,
16 we had the project -- I mean, the land footage
17 that we had would not support the tension basis
18 at that point. We were already 80 percent
19 complete. So then it came down to what could we
20 do with the sitting infrastructure and so forth?
21 And it was nonexistent, there was nothing that we
22 could do."

23 Was any of this discussed with Sinclair?

24 I would imagine so. I can't physically show it
25 to you with the meeting notes or anything.

1
2 If you go to Exhibit N, as in Nancy, please, I
3 have an excerpt from Ronald Castles, page 51, line
4 23, question by Mr. Wilkes: And you wouldn't
5 want -- you wouldn't hold Sinclair responsible
6 for the lateral pipes that they had nothing to do
7 with that aren't performing -- actually, there's
8 a page missing.

9 Next page, 53, goes on to say: -- not
10 implemented, was it?

11 Lateral pipes were installed to convey the
12 water to a gravel bed into a dog-walk with a
13 fence going to the ground; isn't that true?

14 Answer: The water is ending up in the same
15 place whether you look at Sinclair's original
16 plans. They show those roof leaders just
17 floating across the ground, down to the dog-walk,
18 or whether somebody went in and put pipes to get
19 to the dog-walk through the pipes that wouldn't
20 erode the soil, it's still all going to the same
21 place.

22 Was Sinclair's design for site drainage
23 implemented?

24 It appeared that what he had on his plans was
25 implemented.

1 Now what Sinclair had on its plan on the sheet
2 flow of the downspout drainage, wasn't it?

3 That is correct.

4 Mr. Wilkes: That was not implicated, was it.

5 Answer: My understanding it was in the
6 beginning, and then when they were having
7 problems with the emotion, then it was changed.

8 MR. WILKES: Your Honor, for context, if you'd
9 read the next question and answer, it might save
10 some time.

11 THE COURT: I've read it.

12 MR. WILKES: Thank you, Your Honor.

13 MR. LUCEY: Page 130, Mr. Castle, line 8:

14 There's been information in depositions that
15 states that he should have known it was going to
16 flood. He did the landscape as-built, he was one
17 of the last ones out there because the landscape
18 goes in. You know, he should have known at that
19 point there was clay there and it wasn't
20 impervious. You should have seen the fence with
21 the board on it and he should have taken some
22 action.

23 He goes on -- the Court asked about the removal
24 of the board earlier in questioning, Your Honor.

25 Mr. Castle has also testified that removing that

1 board won't solve the problem. "Yeah, more water
2 will get out, but you'll have a problem with your
3 neighbor. It doesn't solve the problem that you
4 can't surface flow the water off this huge parcel.
5 That's the problem."

6 So, Your Honor -- and, additionally, the
7 affidavit that Mr. Castles did that was submitted to
8 the last motion by Sinclair is pendent at Q,
9 paragraph 7: As testified in my deposition,
10 estimate repair and improve inadequate and/or
11 defective plans that lack sufficient details
12 including how to properly handle storm water on this
13 site and failed to adhere to good engineering
14 standards.

15 So, Your Honor, we respectfully suggest that
16 the attempted mitigation by the contractor does not
17 break the chain of causation, does not break the
18 proximate cause, certainly didn't change the overall
19 plan of the site created by Sinclair to have sheet
20 flow, doesn't negate their erroneous drainage
21 direction analysis or flow rate calculation
22 analysis, and that, at best, it would be an issue of
23 fact for the jury. Thank you, sir.

24 MR. WILKES: May it please the Court, Your
25 Honor?

1 THE COURT: Yes, sir.

2 MR. WILKES: So looking at page 8 of
3 plaintiff's brief, Your Honor, at the bottom they
4 cite the testimony of Mr. Pearson, which Mr. Lucey
5 has been through.

6 But at the bottom of page 8:

7 Question: Did you ever question any of the
8 design professionals on that issue.

9 Answer: I'm sure that Ron and I consulted with
10 the environmental, but I can't say specifically
11 what conversations we had or whatever.

12 The next page, the third answer: I don't
13 remember specifically. The contact we had with
14 Sinclair was minimal throughout. I mean, we had
15 our design, we built it as such.

16 So that's minimal contact referenced, Your
17 Honor.

18 Going on, I was trying to pin him down: Okay.
19 Do you recall, one way or the other, whether or
20 not you had a storm water discussion with anybody
21 at Sinclair?

22 Answer: I'm sure that during, you know,
23 whatever issues were raised later on that we
24 thought we had a lot of water coming off of the
25 building that we engaged Sinclair. But at that

1 point, you know, we had the project. I mean the
2 land footage that we had would not support the
3 retention basis at that point. We were already
4 80 percent complete. So it then came down to
5 what we could do with the sitting infrastructure
6 and so forth. And it was nonexistent, there was
7 nothing we could do.

8 And he's -- he's implying they were going to do
9 what they what were going to do as they do with
10 regardless of consultation.

11 So question: Was any of this discussed with
12 Sinclair?

13 Answer: I would imagine so. I can't
14 specifically show it to you with the meeting
15 minutes or anything.

16 Your Honor, this is not the kind of proof that
17 puts professional liability on Sinclair. The
18 suggestion that maybe we talked to them, I imagine
19 we talked to them, is not the same as I consulted
20 with Sinclair, Sinclair approved our change. We
21 know that's painfully ridiculous. Sinclair would
22 have insisted on drawing a new plan, whatever that
23 is going to be. Sinclair would have to legally
24 require to apply the City of Columbia and DHEC for a
25 new permit based on new drawings.

1 THE COURT: Let me ask you this, Mr. Wilkes:
2 Is there any evidence in this file from anybody that
3 the Sinclair system would have worked had it been
4 left alone?

5 MR. WILKES: Well, my client so testifies and
6 our expert Marguerite McClam so testifies. We're
7 not here to balance McClam versus --

8 THE COURT: No, no. I just don't have the
9 benefit of those depositions.

10 MR. WILKES: Oh, yes, sir, there is that.
11 Briefly, Your Honor, Exhibit C, he cited to you an
12 as-built survey. That's for the landscape design.
13 I hope you -- if Your Honor doesn't look at that, I
14 would invite you to look at it.

15 THE COURT: I did look at it.

16 MR. WILKES: All right. It's locating the
17 plans. It's not water drainage, it's a very limited
18 function. And --

19 THE COURT: I think his point was that your
20 people were onsite.

21 MR. WILKES: Well, we had people onsite that
22 are surveyors to find where landscape takes place.
23 We didn't have professional engineers on site to
24 look for any changes in drainage --

25 THE COURT: Nobody saw the water? I mean, even

1 if your people were out there, there is no -- it had
2 to have rained somewhere in the 80 percent of
3 completion.

4 MR. WILKES: Mr. Lucey cross-examined -- or I'm
5 not sure if it was Mr. Lucey. Mr. Lucey or his firm
6 cross-examined our expert. There's no testimony in
7 there that he was ever out there and there was
8 flooding in the dog-walk and he was asked what to do
9 it; none of that, Your Honor.

10 And, in fact, the superintendent, you know, he
11 makes the handwritten note that Mr. Lucey read, the
12 we have big problems. Well, that's when you do call
13 the civil engineer. If you think you've got a
14 problem for the civil engineer, call him up; what's
15 going on here? What are we going to do about it?
16 Wait a minute, it's going to work later, I mean,
17 whatever. But that needs to be done professionally.
18 At this stage you cannot hold a professional
19 responsible for something that the owner-developer
20 team took on themselves and says, yeah, I think we
21 consulted with the engineer. But they don't say,
22 yes, we consulted with the engineer, he specifically
23 approved our new design, but didn't insist on any
24 more drawings, didn't insist on any more permitting,
25 didn't ask for the City of Columbia inspector to

1 come out and say, hey, is this new approach going to
2 work. And, of course, we all know and Mr. Castles
3 would admit that point drainage at the perimeter of
4 the building would not be allowed.

5 But, Your Honor, I'm sure they have an expert
6 who says our design is inadequate; we have an expert
7 who says our design is fine. Our engineer sticks by
8 his design. That's not the issue here today.

9 THE COURT: Were there any contract issues in
10 terms of limitation of your scope of work?

11 MR. WILKES: Well, there is. That's important
12 because we did not have construction administration
13 responsibility, which means we don't have a duty to
14 detect changes that the owner-developer tries to --
15 decides to make in our plan. We don't have any duty
16 to find that, to the public or anybody else,
17 therefore we don't have constructive notice of any
18 changes. We don't have a circumstance where we're
19 out there and we should have exercised due care in
20 construction administration and had we done so we
21 would have detected this change and we would have
22 told them not to do it. That's not our duty. We
23 specifically contracted not to have that duty.
24 Thank you, Your Honor.

25 THE COURT: Mr. Lucey?

1 MR. LUCEY: Yes, Your Honor. Regardless of
2 what the contract says, regardless of what the
3 contractor did, they had a duty to require the City
4 of Columbia storm drainage regulation with their
5 design. Our engineer says they did not do that.
6 That alone is an issue of fact.

7 THE COURT: So you're saying that once the
8 change was adopted by your contractor, it should
9 have been -- somebody should have notified the City
10 that the concept of the design was being changed?

11 MR. LUCEY: I'm actually referring to an
12 earlier point in time, which is the original
13 permitting of this sheet water concept. They had to
14 prove to the City that either they could either get
15 their water into that ditch and the flows on their
16 properties wouldn't change or they needed to design
17 an alternative way to drain the property. My guy
18 says sheet flow won't work on this property with
19 this size building. And with the lack of --

20 THE COURT: Does the City approval provide them
21 any insulation?

22 MR. LUCEY: The City -- not if, as my expert
23 says, the approval is based on an erroneous drainage
24 calculation. They sealed that drainage calculation,
25 they're responsible for it.

1 THE COURT: They can't hold up the City
2 approval in saying my design is --

3 MR. LUCEY: No, they can't, otherwise they'd
4 have it here before you. And I believe in the
5 actual permitting documents it has a central town
6 permitting statement which says: This approval is
7 relied upon your design that you submitted to us and
8 your certifications. Thank you, sir.

9 THE COURT: Anything further?

10 MR. WILKES: No, Your Honor.

11 THE COURT: Proposed orders within ten days.

12 MR. LUCEY: Yes, sir. Plaintiffs mediated the
13 garage case and settled with one of the two garage
14 defendants about, I want to say, four or five months
15 ago. And Plaintiffs have moved to sever the garage
16 case and send it to trial because of the lack of
17 overlap between the garage issues and the
18 condominium building issues. And there's only one
19 garage defendant that we want to sever and send to
20 trial, and that's the garage erector. They actually
21 took the prefab concrete and then pulled it up with
22 the cranes and put it together.

23 It's Plaintiff's allegations that there are
24 substantial deficiencies in the erection; for
25 instance, a lot of these upper floors are supported

1 on what's called corbels. They're like shoulders
2 coming out of the concrete wall that help support
3 the 10 or 20 tons of concrete. And some of these
4 corbels are rotated, some of them are two feet below
5 the piece that they're supposed to support, things
6 like that.

7 We're -- we would like the Court to sever the
8 concrete case and send it to trial. At the time we
9 made that petition, part of our motivation actually
10 was that the main case was still on appeal. The
11 main case is no longer on appeal, we've had our
12 remittitur.

13 We still want to sever the garage case or
14 bifurcate, whatever pleases the Court, because of a
15 lack of overlap; a lack of overlap on experts, lack
16 of overlap on issues. And, frankly, we think trying
17 a two- or three-day trial on completely separate
18 issues would be a lot more efficient for the
19 Court --

20 THE COURT: Are T&M the erector?

21 MR. LUCEY: They're the erector.

22 THE COURT: Oh, they are?

23 MR. LUCEY: Tindall was the manufacturer and
24 they settled out three or four months ago. T&M is
25 the erector. And I'm not sure what the basis of the

1 acquisition is. I'll be happy to address it when we
2 hear it, but as I said, I tried to -- in that
3 memorandum, I tried to outline, for instance, the
4 liability expert relating to the condos for the
5 plaintiff is different than the liability expert
6 relating to the garage.

7 The damage expert is the same, but he has two
8 different estimates, so it's already separated out.
9 There is a separate garage repair estimate. The
10 fact witnesses are completely different. T&M would
11 no longer be in the condo case, so their witnesses
12 would not be in the condo case. There's no need to
13 have the remaining condo defendant fact witnesses in
14 the garage case.

15 And this is -- you know, while Plaintiffs will
16 have to put on a board representative in each case,
17 it would be on different issues; it would be on
18 issues in the parking garage versus the issues in
19 the condominiums. So we think that that will make a
20 much more manageable final case.

21 We'd also like the Court to set the final case
22 for trial, but the main cases in this case, we're
23 ready to go to trial. We have one or two other
24 depositions. Somebody just named an expert a few
25 weeks ago and we're deposing him in two weeks. But

1 we'd be ready to go to trial in the garage case. I
2 assume that the Court would probably actually do the
3 scheduling at another time once the decision on
4 whether or not to sever was in play.

5 But we'd love to try -- the plaintiffs would
6 love to try the garage case at the end of September,
7 maybe the week of September 24th or somewhere
8 thereafter, and then try the second case four or
9 five weeks later and try to bring this to a close.

10 THE COURT: All right.

11 MR. CRANSHAW: Yes, sir.

12 THE COURT: I'm sorry. I forgot your name.

13 MR. CRANSHAW: Brad Cranshaw.

14 THE COURT: I'm sorry.

15 MR. CRANSHAW: Yes, sir. And I represent T&M
16 Concrete in this case. It's an interesting case,
17 it's a broad case, as Your Honor knows.

18 THE COURT: Tell me about it.

19 MR. CRANSHAW: Dozens of parties. We've
20 been -- the seasons have changed since I saw you
21 last. I was at the last hearing. And it's hot
22 again, so here we are well into the litigation, well
23 into discovery in this case. Discovery is still
24 open in the matter. The case has been pending now,
25 I believe, more than four years in litigation.

1 And it's interesting when a case like this
2 comes, and I handle a good bit of construction
3 defense. We can provide a brief to Your Honor. I
4 usually wait to get theirs -- I didn't get it til
5 Friday -- so I can hit back. But I'm happy to
6 provide a brief to Your Honor if Your Honor would
7 entertain that.

8 THE COURT: Well, I'm going to -- go ahead.
9 What's your position?

10 MR. CRANSHAW: My position is that the case
11 should not be severed, that the case is -- there are
12 issues of setoff in this case. There are six
13 parties left; mine, the erector of the garage, there
14 are numerous parties they have already settled out
15 of the case. I believe that there is a crossroad
16 between the two, between the erection of the
17 condominium project and the erection of the garage.

18 THE COURT: You did both?

19 MR. CRANSHAW: No, I did not do both. All I
20 did was erect the garage. But there are design
21 elements. We're talking about water runoff. These
22 cases are about water, water, water. They're
23 talking about runoff behind my garage, they've made
24 allegations related to runoff issues in the garage.

25 In the courtroom is counsel for HGE Consulting

1 and Engineer. There are drains in the garage that
2 Plaintiff has claimed are too small, their expert
3 has claimed that they don't apply for -- that they
4 don't allow for proper drainage in the garage.

5 HGE has also design elements in the
6 condominium. The concept that -- and I want to show
7 a jury what HGE has done. I'm sorry, but I very
8 well may attack HGE's design elements in the
9 condominium project as an exemplar for the jury:
10 Well, it's obvious -- Your Honor would go, it's
11 obvious that HGE designed the wrong drain over here
12 in my garage, look at what they did in the
13 condominium project.

14 There are parties -- Rhett Whitlock --
15 Dr. Rhett Whitlock, who is a friend, I call him a
16 friend, I've seen him many times in this case,
17 Dr. Rhett Whitlock is one of the chief experts for
18 the plaintiff. He does a lot of work on the
19 condominium side of this case.

20 Rhett Whitlock is on the board of standards --
21 the ASTM Standards board for concrete. I call
22 Dr. Rhett Whitlock Dr. Brick. The first person I
23 called when I got this case was Dr. Rhett Whitlock.
24 I wanted to use him as my expert; couldn't use him,
25 they had already hired him, so I had to go find

1 Dr. Brick II, which was very hard. I found another
2 concrete expert who has a Ph.D. This case is about
3 the erection of a concrete garage slab design. And
4 I have -- I was able to find him out of D.C.,
5 Dr. Brick II, I call him, Dr. Ed Cleveland. He's
6 testified in the case.

7 There are aspects of the erection of the garage
8 and elements of the plaintiff's allegations that
9 Dr. Whitlock did indeed have a hand in, had an
10 interest in. And so we've got shared witnesses,
11 we've got shared defendants. The concept that the
12 HOA is going to have two separate people -- and he
13 said it out of his mouth right here -- two separate
14 people to testify, I'd like to have that done and
15 overlap that testimony in front of a jury. It
16 should be done all at the same time.

17 The concept -- these are all factual issues
18 that I've laid out for Your Honor. The legal aspect
19 of the setoff is mind-boggling. The concept of
20 how -- and this will be a burden to the Court, in
21 all due respect: The concept of you can try two
22 separate cases with so much overlap in the setoff,
23 I've gone through, with the help of other counsel,
24 and we've looked at the settlements that have been
25 procured by the plaintiff, we estimate \$14 million

1 worth of settlements, well in advance of what that,
2 cost to build that garage, well in advance of what
3 it cost to build the entire project, and I believe
4 that we should have the right to demonstrate, at the
5 appropriate time, to the legal arbiter how those
6 setoffs should be -- what credit we should get for
7 those setoffs.

8 And the concept of doing it twice, judicial
9 economy, plaintiff's counsel said 90 minutes to pick
10 a jury forgetting the concept of trying this case
11 twice with the setoff issues is mind-boggling. It
12 all should be done --

13 THE COURT: The setoff issues wouldn't be in
14 front of the jury.

15 MR. CRANSHAW: It wouldn't be. But the concept
16 of taking the setoff and trying to parse it twice
17 when I've got the same defendants, witnesses, same
18 expert witnesses testifying to separate points, all
19 these drainage issues are things that I want to take
20 up and I want to use the exemplar of the condo to
21 show. Divide and conquer is what he's after. And I
22 appreciate it, but it's just too messy. These
23 cases -- these cases, they've been joined --
24 conjoined twins for four years.

25 THE COURT: What's the status of the discovery

1 in your case?

2 MR. CRANSHAW: There -- it is open discovery.
3 Forgive me, there's no scheduling order. There's
4 open discovery in this case. And I'm interested in
5 delving into some further expert testimony. Tindall
6 got an item -- claimed all of the witnesses as mine
7 in the discovery.

8 Tindall's witnesses I can reach out and grab if
9 I like because Tindall settled. Tindall was the
10 designer of the garage, but I'd be interested in
11 potentially reaching out to some of those witnesses.
12 I may be open to bringing further witnesses myself.

13 So it's not packaged for trial as, with all due
14 respect, Plaintiff has stated to the Court. I
15 believe that the cases are so intertwined, and I
16 don't know why you'd want to do it twice, Your
17 Honor. Thank you, sir.

18 MR. WILKES: Gentlemen, I'd like to, if I may,
19 on behalf of Mr. Sinclair, solicit a response. The
20 setoff issue is a concern for us, and so we object
21 to severing the claim. We object to Plaintiff's
22 motion to sever to the extent that it prejudices the
23 Court's ability to adjudge setoff. For example, the
24 developer groups of defendants and the developer
25 owner-contractor, they're all sort of wound into

1 one, according to Plaintiff's theory. They've paid
2 something in the range of \$10 million in this case.
3 Obviously, if we go to a jury verdict against my
4 client, which is only a
5 several-hundred-thousand-dollar issue, we are going
6 to ask for a -- and if we suffer a jury verdict, we
7 will ask the Court to administer a setoff.

8 And I know it's equitable setoff is something
9 the Court has to determine in the Court's view of
10 what is fair in the circumstances. And I do not
11 want, for example, Mr. Cranshaw's case to go forward
12 and be tried, and if he loses and then the Court
13 administer some setoff and somehow that is deemed
14 prejudicial to our ability to seek setoff. And
15 we're speculating because we don't know about setoff
16 until -- unfortunately, on the defense side, until
17 you go to lose and you got an adverse jury verdict
18 and then you need some help and you're asking for
19 setoff.

20 So it's the same settlement monies and it's the
21 developer-contractors and the architect that have
22 project-wide responsibility. I guess the
23 architect -- I don't know that the architect
24 settlement relates to the garage. But as to my end
25 of things -- and the real focus on the

1 developer-contractors, they have project-wide
2 responsibility. And I believe it's correct to state
3 that the project-wide responsibility defendants are
4 now all out of the case and have paid something in
5 the range of at least \$10 million.

6 And there will be some setoff if adverse jury
7 verdicts are suffered; there would be some setoff --
8 and, with all due respect, I think there would be --
9 against any adverse jury verdict against any of the
10 remaining defendants.

11 So our position is we oppose the motion to
12 sever to the extent it would impair our ability to
13 any extent to seek a full equitable setoff, whatever
14 the Court determines is equitable in the
15 circumstance.

16 THE COURT: All right. I'll hear from
17 Mr. Lucey.

18 MR. LUCEY: Sir, having just spent a year
19 litigating setoff in front of Judge Goodstein, I can
20 represent to the Court that whether this goes
21 forward as one trial or two, a setoff is completely
22 unaffected. That's not an issue. There's plenty of
23 discussion in South Carolina courts for setting off
24 from another case, even in other jurisdictions.
25 It's just not an issue. And that is actually --

1 THE COURT: That's an issue for the Court.

2 MR. LUCEY: That is an issue for the Court.

3 It's got nothing to do with a jury trial, nothing
4 whatsoever. And not only that, but we're not
5 seeking prejudice, whatever setoff rights are
6 mentioned there or not there. And for that reason,
7 if the Court had any concern whatsoever about it,
8 procedurally the Court would call this a bifurcation
9 instead of a severance and they would remain the
10 same case and the Court would have complete
11 jurisdiction over both of them. We're not seeking
12 to do that. The -- and I think the issue of setoff
13 would be easier if there was a separate jury verdict
14 against the garage people. I think it would be much
15 easier.

16 Secondly, we're not suing the garage people for
17 the plumbers' wrong size pipes. They just -- it
18 just drops one issue right out of the case for them,
19 there's nothing there. We can't hold the erector
20 liable for the wrong size plumbing inlet by the --
21 by MEP expert. So it's just a nonissue.

22 As of now, I'm not calling Dr. Whitlock. We
23 have a greater specialist -- a greater expert in our
24 garage case on garage issues. His second thought
25 about wanting to call Rhett Whitlock, I don't know,

1 as his expert or to somehow show -- to say that all
2 the other defendants did badly in the condos so you
3 shouldn't blame my guy for screwing up the erection
4 of the garage, I think there's a -- there's
5 certainly no cross-claims between any of these
6 parties that are being affected by this request.

7 So, I mean, I think what counsel just told the
8 Court is he wants to keep the cases together so he
9 can obfuscate to the jury what his client did. And
10 I don't think that's a valid reason for -- under the
11 rules that were cited for the Court in our brief as
12 to what the consideration of this issue.

13 And so I think it would be a neat and tidy
14 trial. I'm not going to talk about specific issues.
15 I'm not -- we're not suing T&M for the size of the
16 plumbing inlets. I don't know why plumbing is even
17 coming up.

18 And with regards to more depositions and
19 more -- we've had ongoing discovery. I've not
20 gotten a deposition notice in the garage case for
21 four, five, six months, so if there's depositions
22 out there, that's kind of passed. The case is five
23 years old.

24 We're happy to oblige if they want to schedule
25 some depositions between now and September 24th.

1 We'd like to get the garage case to trial in late
2 September and the main case to trial five weeks
3 thereafter. Thank you, sir.

4 THE COURT: All right. Mr. Cranshaw?

5 MR. CRANSHAW: The greater expert is what he
6 said, Rhett Whitlock. It's not his choice to
7 determine what I believe is useful for the jury's
8 obfuscation, comparison of how the monies are spent
9 by their experts, the bloated numbers that their
10 experts have put out in the garage, on one hand, and
11 how it's mirrored on the condo side. That's not
12 obfuscation, that is a -- those are glasses. Let's
13 take a look at what they've done, that's what I'm
14 interested in. And Rhett Whitlock, if he doesn't
15 call him, I will. Thank you, Your Honor.

16 THE COURT: All right. Rather than ask you for
17 a memorandum, Mr. Crenshaw, I'm just going to
18 request that both of you -- and you can put it in
19 the form of an order. But I'm suggesting that both
20 of you submit proposed orders within ten days.

21 MR. CRANSHAW: Thank you, Your Honor.

22 THE COURT: Mr. Wilkes, you may want to
23 consolidate with Mr. Crenshaw at your option
24 whether --

25 MR. WILKES: I would just ask that if he would

1 review that with me, that would be fine, Judge.

2 MR. CRANSHAW: Absolutely.

3 MR. WILKES: Thank you. Your Honor, when we're
4 done with that, I have another administrative matter
5 that I'd like to bring up, if I may.

6 THE COURT: All right. Well --

7 MR. WILKES: At your leisure.

8 THE COURT: -- I'm down to a very simple issue;
9 that is a -- an order of dismissal which has been
10 furnished by Mr. Lucey on another matter -- I mean,
11 on another --

12 MR. WILKES: In a separate case?

13 THE COURT: No, no. This has to do with order
14 of dismissal with prejudice as to defendants DDC
15 Construction and Columbia Condos because it's
16 already settled.

17 MR. WILKES: Well, I have a position on that,
18 Your Honor. And I don't know -- I thought a signed
19 order came up through the mail. Justin, is that
20 what you just handed me?

21 MR. LUCEY: I thought I got an electronic
22 notice of a signed order, but I brought the original
23 any way.

24 MR. WILKES: So, Your Honor, the problem --

25 THE COURT: I haven't signed any orders.

1 UNIDENTIFIED SPEAKER: Judge Manning signed
2 something, I think.

3 THE COURT: Oh.

4 MR. WILKES: So, Your Honor, we have the same
5 problem that we had last summer: Judge Manning has
6 signed an order that got -- the order that's just
7 been sent to you, he signed that order. And, of
8 course, he doesn't have the authority to sign that
9 order. Now, I'm sure he wasn't -- you know, he just
10 has got a stack of orders.

11 THE COURT: Just last week.

12 MR. WILKES: He signed it. He doesn't have
13 authority to sign that, doesn't have jurisdiction to
14 sign that. That's right, Your Honor.

15 THE COURT: You're right.

16 MR. WILKES: We dealt with this last summer.
17 And I object to the orders that's been submitted to
18 you for you to sign because we have asked for the
19 settlement agreement that is the basis for that
20 order and the plaintiffs have refused to produce the
21 settlement agreement.

22 And, Your Honor, we've already briefed last
23 year a motion to compel the settlement agreement. I
24 mean, this all just came up. We have not filed a
25 motion to compel the plaintiff to file --

1 THE COURT: You said you had already seen it
2 though. You do not --

3 MR. WILKES: I've seen the proposed order but
4 not the settlement agreement.

5 THE COURT: For these defendants?

6 MR. WILKES: That's correct, for that
7 particular settlement. That's the settlement
8 that --

9 THE COURT: But you've seen all the rest of
10 them?

11 MR. WILKES: I have seen all of the rest of
12 them except, I think, last summer we dealt with one
13 particular defendant who didn't want anybody to see
14 the order. We had you review the order -- excuse
15 me, the settlement agreement -- forgive me, that
16 settling defendant last summer. You reviewed the
17 settlement agreement because -- to be sure that
18 there was nothing odd in there that might affect the
19 testimony of witnesses. All right.

20 So our position last summer and today, Your
21 Honor, is that under the Tort Claims Act, we're
22 entitled to setoff just as a general rule. All
23 right. The Court ultimately decides about that.
24 It's as a general rule, a statutory rule. The
25 settlement, of course, affects a release of claims

1 and it affects a release of tort liabilities, that
2 is a contribution in tort, but it must be in good
3 faith. And this is the same argument as last
4 summer. So unless I can see the settlement, I
5 cannot judge for myself whether it's in good faith
6 or whether there's something about it that causes me
7 to believe that it is not in good faith.

8 So I don't have the ability to evaluate the
9 settlement agreement, therefore I cannot evaluate
10 whether the dismissal is something that should occur
11 so as to achieve this immunity, if you will, to
12 contribution exposure. So, once again, I ask --
13 before the Court signs this, I would like to have
14 the settlement agreement so I can review it. We've
15 offered --

16 THE COURT: Any objection to that, Mr. Lucey?

17 MR. LUCEY: Sir, we've always given up every
18 settlement agreement except where another party has
19 required us to keep it confidential.

20 THE COURT: Not this one.

21 MR. LUCEY: These two have confidentiality
22 terms. I'll first hand you the settlement agreement
23 with Tindall. Paragraph 16 on page 6 is a
24 confidentiality clause.

25 THE COURT: Let me -- just for the record, do

1 you agree that the Manning order is without
2 jurisdiction?

3 MR. LUCEY: Yes, Your Honor.

4 THE COURT: All right.

5 MR. LUCEY: In fact, I think my cover e-mail
6 to -- when we submitted it might have even said that
7 I would bring the original to this hearing. So I
8 was just as surprised as anybody when it came
9 through.

10 THE COURT: Well, he -- 14 days prior to that,
11 he became chief administrative judge for common
12 pleas and, as Mr. Wilkes has pointed out, he
13 probably just got a stack of orders and went right
14 through it. But we will advise him.

15 MR. WILKES: Your Honor, you've been handling
16 the Tindall, I guess, settlement agreement.
17 Tindall, I believe, was a stipulation of dismissal,
18 which violated Rule 41, did not have the consent of
19 all the other parties. Rule 41 requires that
20 consent. I'm not here to ask for that dismissal or
21 stipulation of dismissal to be vacated, but we need
22 the Tindall settlement agreement, we need this
23 latest DDC settlement agreement, or we need to
24 address it in some manner of akin to last summer, or
25 the Court can enter this confidentiality agreement.

1 And this happens all the time. We see
2 confidential settlements all the time as remaining
3 parties in litigation. And that's really the best
4 way, in my view, of handling this. We're not going
5 to publish it to the world; we'll keep it
6 confidential, as we're required to do.

7 THE COURT: What's the matter with that,
8 Mr. Lucey?

9 MR. LUCEY: Your Honor, the settlement
10 agreements aren't relative to anything until there's
11 a verdict. The way the Court handled it last time
12 was, one, you reviewed the agreements, and secondly,
13 my recollection is you actually kept a copy of the
14 agreement. We, of course, always come to court and
15 tell the Court we'll have the agreements ready at
16 the appropriate time. And we'll always have them
17 ready, that's why I brought them today.

18 I'm not trying to hide anything, but there's a
19 confidentiality provision. And I thought that's the
20 only ones he wanted, which is why I brought it. And
21 we think we're obligated to give Tindall notice. We
22 waive it. We will have it available to them, should
23 there be a verdict.

24 MR. WILKES: Your Honor, it is relevant today
25 as to the good-faith issue. I cannot evaluate the

1 good-faith aspect of this and impose an objection if
2 the settlement agreement, for example, has some
3 unusual provision about witnesses, restraining
4 witnesses, sending them to Tahiti. I mean, there's
5 just an infinite number of possibilities. I doubt
6 any of that has occurred, but that's just keeping a
7 light on the process. We're not trying to gain any
8 strategic advantage. I'll be glad for these people
9 to pay their money.

10 THE COURT: Why don't you and Mr. Lucey
11 exchange photos, confidentiality agreements, and
12 I'll sign this once a confidentiality agreement is
13 reached?

14 MR. WILKES: Does that mean he will produce the
15 settlement agreements pursuant to the
16 confidentiality agreement --

17 THE COURT: I assume so.

18 MR. WILKES: -- once -- order, I mean --

19 THE COURT: I would assume so.

20 MR. WILKES: -- once you sign it? Thank you,
21 Your Honor.

22 MR. CRANSHAW: Your Honor, if I may, I'd like
23 to join in that agreement. Certainly Tindall was
24 the general contractor on my side and I've not been
25 provided with this information -- with this

1 information either.

2 MR. WILKES: It should be for all parties, Your
3 Honor.

4 THE COURT: Yes.

5 MR. WILKES: An order for the entire case.

6 THE COURT: Yeah.

7 MR. WILKES: All right. Thank you, Your Honor.

8 THE COURT: Is there anything else,
9 particularly from your standpoint, that needs to
10 be --

11 MR. LUCEY: Your Honor, simply that if the
12 Court grants the motion to reconsideration in the
13 first case, we're going to move to consolidate the
14 Quality Built case to the main Gate case just for
15 trial.

16 THE COURT: All right. Well, let's talk about
17 just the main Gate case that's for trial, regardless
18 of the roof case. When do you anticipate being
19 ready for trial?

20 MR. LUCEY: I would like --

21 THE COURT: Let's just get some target dates
22 out there. Quite frankly, it's probably going to be
23 2018. But I'm not -- perhaps in the latter part of
24 '17.

25 MR. LUCEY: I'll be ready for the severed

1 trial, or the main case if it's not severed, on
2 September 24th, 2017.

3 THE COURT: You'll be ready to go?

4 MR. LUCEY: Yes, sir.

5 THE COURT: All right. Well, wouldn't it be
6 prudent to just have some meeting of all defendants,
7 remaining defendants, to adopt some sort of
8 scheduling order before trial?

9 MR. LUCEY: Yes, sir.

10 THE COURT: I just don't think the plaintiff
11 can dictate when all the other defendants must go to
12 trial unless -- unless you have to.

13 MR. LUCEY: Well, honestly, the only other
14 defendants -- the only discovery that's taken place
15 in the last year is garage depositions. We wound
16 up -- we got that -- so we got that portion of the
17 case -- and I may be exaggerating. But there really
18 is no discovery taking place.

19 We are doing discovery in the case that is sent
20 to arbitration, the roofing case, which has nothing
21 to do with us here because it got sent to
22 arbitration. But we've been doing expert
23 depositions in that case and we're trying that case
24 at the end of August. But nobody in the case,
25 except for a notice of a new expert being named that

1 we got two weeks ago, nobody in the main case is
2 doing discovery. We need to take that new expert
3 and -- I mean, obviously, you have to allow for
4 other trial scheduling. But --

5 THE COURT: Right. That's my concern too.

6 MR. WERNER: Your Honor, Jim Werner. I want
7 to -- Mr. Lucey and I have the roof case in
8 arbitration. But with respect to the -- what you're
9 calling the main case, I have a defendant in that as
10 well, Dietrich Building Systems. And the idea that
11 discovery has not -- the case has been stayed, as
12 far as I understood and was concerned until very
13 recently.

14 So I represent a party that was brought in, I
15 believe, 16 or 17 months after the case had gotten
16 started. So the idea that it just is ready for
17 trial because Plaintiff says it's ready for trial I
18 just don't think is appropriate.

19 THE COURT: The plaintiff says he's ready.

20 MR. WERNER: Right. And so I would agree
21 that -- I mean, I don't think it's a long time that
22 we needed, but just stipulating that everybody else
23 ought to be ready to go because the plaintiff is I
24 don't think is appropriate.

25 THE COURT: With sufficient notice.

1 MR. LUCEY: Just to be clear, while the trial
2 has obviously been stayed by the appeal, the case --
3 the underlying case has never been stayed unless
4 someone wants to share an order with me that I'm not
5 aware of. We've been proceeding with discovery.

6 THE COURT: Yes, sir?

7 MR. ADAMS: Yes, Your Honor. Chris Adams. I
8 represent HGE. I would just add there hasn't been a
9 lot of discovery done recently, but there are -- I'm
10 in a process now of going back and revisiting.
11 There were several people who were deposed like
12 seven or eight years ago, and since then
13 supplemental documents have been produced from,
14 like, for example, HOA has reduced repair estimates
15 and things of that nature after they were originally
16 deposed. So I'm in the process of going through
17 that.

18 I would be anticipating at least noticing
19 probably one or two HOAs or property manager
20 depositions prior to trial. I would also just note
21 that I have -- I think it's been signed, but I have
22 the protection that first week of October and the
23 first week in November. So --

24 THE COURT: So those are the issues that --

25 MR. ADAMS: With all that stuff, you're

1 probably correct that more than likely early '18.

2 MR. CRANSHAW: Your Honor, I'm the target of
3 the severance motion and I've got T&M. What's
4 interesting to me is we have been working in good
5 faith to try to resolve the case. As I recall, the
6 mediation was three months ago. I've not received
7 other continuing duty to discovery. I know there's
8 an issue that we've discussed here today relating to
9 the settlement agreement, but I want to see if the
10 settlement agreement does address those witnesses,
11 and I may well be interested in getting into
12 testimony from those Tindall witnesses now that
13 those Tindall witnesses will be more beholding to
14 the plaintiffs. So there is some discovery that I
15 believe I may be entitled to.

16 I'm anxious to try the case when the parties
17 can come together and when the Court is prepared to
18 hear it. But the issue of going to trial in two
19 months, it seems a -- is wishful thinking in my
20 mind.

21 THE COURT: All right. Thank you.

22 MR. LUCEY: Thank you, sir.

23 THE COURT: Anybody else? All right. Thank
24 you, counsel.

25 -- END OF TRANSCRIPT OF RECORD --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Richland County, South Carolina, on the 17th of July, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 28, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
RICHLAND COUNTY

THE GATES AT)
WILLIAMS-BRICE CONDOMINIUM)
ASSOCIATION AND KATHARINE)
SWINSON, INDIVIDUALLY AND)
ON BEHALF OF ALL OTHERS)
SIMILARLY SITUATED,)

Plaintiffs)

VS)

DDC CONSTRUCTION, INC.;)
KAPASI GLASS MART, INC.;)
DMC CONSOLIDATED, INC.;)
DMC BUILDERS, CO. INC.,)
INDIVIDUALLY AND D/B/A THE)
DINERSTEIN COMPANIES, DC)
DEVELOPERS - COLUMBIA)
CONDOS, INC.; COLUMBIA)
CONDOS, LP; DMC DEVELOPERS)
I, LTD.; 31-W INSULATION)
COMPANY, INC.; ASSOCIATED)
CONCRETE CONTRACTORS, INC.;)
BAILEY ELECTRIC COMPANY,)
LLC; C&B UTILITIES, LP;)
CAROLINA FLOOR SYSTEMS,)
INC.; CENTURY FIRE)
PROTECTION, LLC; CHEROKEE)
INC.; CORONADO STUCCO, LP;)
CROSS PLAINS CUSTOM TILE,)
INC.; LOWRY CONSTRUCTION &)
FRAMING INC.; LTB)
CONSTRUCTION, INC.; MARTIN)
MORALES JR. PAINTING &)
DRYWALL, LLC; METAL)
CONSTRUCTION MATERIALS,)
INC.; SOUTHWEST IRONWORKS,)
INC.; THE CLERKLEY/WATKINS)
GROUP, LP; TINDALL)
CORPORATION; TRIAD PEST)
CONTROL, INC.; WYMAN)
ACOUSTICS LLC; ALENCO)
HOLDING CORPORATION, ALENCO)
WINDOW GA, LLC, NEW ALENCO)

CASE NO. 2012-CP-40-8512

1 COMPANY; CROSBY WINDOW,)
 2 INC., F/K/A ACTION WINDOOR)
 3 TECHNOLOGY, INC.;)
 4 GEO-SYSTEMS DESIGN &)
 5 TESTING, INC.; HGE)
 6 CONSULTING, INC.;)
 7 MAINTENANCE BUILDERS)
 8 SUPPLY, LTD.; SCA ENGINEERS)
 9 INC.; SINCLAIR & ASSOCIATES)
 10 INC.; FAULTLESS HARDWARE)
 11 INDIVIDUALLY AND D/B/A)
 12 PAMEX INC.; T&M CONCRETE,)
 13 INC.; LOVELESS COMMERCIAL)
 14 CONTRACTING, INC.; ECONOMY)
 15 WATERPROOFING, INC.; BMC)
 16 WEST CORPORATION; HIGHWAY)
 17 ONE CONSTRUCTION, INC.;)
 18 J.I. WINDOWS LLC; DEITRICH)
 19 INDUSTRIES, INC., A/K/A)
 20 DIETRICH METAL FRAMING,)
 21 INC., N/K/A CLARKWESTERN)
 22 DEITRICH BUILDING SYSTEMS)
 23 LLC; BEST MASONRY AND ITS)
 24 SUCCESSOR IN INTEREST, OLD)
 25 CASTLE APG; HEADWATERS,)
 INC. D/B/A BEST MASONRY;)
 AND JOHN DOES #1-10,)
)

Defendants)

ORAL DEPOSITION OF
 BETH MICHAELIS
 AUGUST 5, 2014

REPORTED BY: SAMANTHA FALCONE
 MAGNA LEGAL SERVICES
 (866)624-6221
 www.magnals.com

1 ON BEHALF OF DEFENDANT HCM UTAH, LLC, IMPROPERLY NAMED
 2 BEST MASONRY AND ITS SUCCESSOR IN INTEREST,
 3 OLDCASTLEAPG, AND HEADWATERS, INC. D/B/A BEST MASONRY:
 4 Mr. Joshua A. Bennett
 5 ROGERS TOWNSEND & THOMAS, PC
 6 220 Executive Center Drive
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 8 (803)771-7900
 9 joshua.bennett@rtt-law.com

10 ON BEHALF OF DEFENDANT CLERKLEY/WATKINS GROUP, LP:
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1 ORAL DEPOSITION OF BETH MICHAELIS, produced as a
 2 witness at the instance of the PLAINTIFFS, and duly
 3 sworn, was taken in the above-styled and -numbered
 4 cause on August 5, 2014, from 1:01 p.m. to 4:12 p.m.,
 5 before Samantha Falcone, CSR in and for the State of
 6 Texas, reported by machine shorthand, at the Hyatt
 7 Regency DFW, 2334 North International Parkway, Dallas,
 8 Texas, pursuant to the provisions stated on the record
 9 or attached hereto.

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 21 DINERSTEIN COMPANIES, DMC DEVELOPERS I, LTD, DMC
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 24 FLOOR SYSTEMS, INC.; CHEROKEE, INC.; CORONADO STUCCO,
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BETH MICHAELIS,
having been first duly sworn, testified as follows:
EXAMINATION

BY MR. LUCEY:

Q. Ms. Michaelis, what's your current employment, please?

A. I work at Quality Built, LLC.

Q. What is Quality Built, LLC?

A. It's a company that does third party quality assurance inspections.

Q. Your position there, please.

A. I'm the president.

Q. And how long have you been the president there?

A. Four years.

Q. Where is it located, please?

A. It's 401 Southeast 12th Street, Fort Lauderdale, Florida.

Q. Any other locations?

A. Yes. There's a San Diego location.

Q. Any others?

A. No.

Q. Let's cover your personal background briefly and then we'll cover your professional background and then we'll get to the issues that bring us here today.

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Personal background. Tell us, please, where you -- where and when you were born.

A. Ponca City, Oklahoma, 1962.

Q. And where did you get your high school degree?

A. Roswell, New Mexico.

Q. Year?

A. I don't know the year.

Q. Okay. Do you have any college education?

A. Yes, I do.

Q. What's that, please?

A. I graduated from Brigham Young University with degrees in audiology and electrical technology under the College of Communicative Disorders.

Q. What year was that degree, please?

A. 1982 or '83.

Q. Okay. And just tell us briefly, please, what -- audiology and electric technology, what that involved.

A. Audiology is hearing testing and the -- it was a dual degree to design hearing aids.

Q. And does the electrical technology tie into the hearing testing?

A. Correct.

Q. Okay. And any postcollege education,

1 please?

2 A. No.

3 Q. Was -- the dual degree in college, was that
4 a bachelor's?

5 A. Yes, it was.

6 Q. Science or arts?

7 A. Science.

8 Q. Let's cover your professional background,
9 beginning with your employment after you got your
10 degree at Brigham Young, please.

11 A. Well, right out of college I worked at a
12 place called Pamela's, which was a kitchen shop in
13 Salt Lake City, Utah.

14 Q. And roughly how long were there, please?

15 A. Two years.

16 Q. After that, please.

17 A. After that I worked for a hearing aid place
18 in La Habra, California.

19 Q. For how long, please?

20 A. Seven or eight years.

21 Q. After that, please.

22 A. After that I went to work for -- well, after
23 that I started a day care. It was Rent-A-Mom Day
24 Care.

25 Q. How long did you do that, please?

1 A. Four years.

2 Q. After that, please.

3 A. After that I went to work for Pacific
4 Property Consultants.

5 Q. Approximately what year would that be?

6 A. It would be about 1992, '93, somewhere in
7 there.

8 Q. And how did it come to pass that you went to
9 work for Pacific Property Consultants?

10 A. My next-door neighbor, Stan Luhr, owned the
11 company. He would talk to me a lot about problems
12 that he was having in his office, meaning that he was
13 out all the time on inspections and he needed somebody
14 there. And I said I could do that for him and so he
15 hired me to be his office manager and I went to work
16 there.

17 Q. What was the business of Pacific Property
18 Consultants?

19 A. They did expert witness work to defend
20 builders and developers involved in construction
21 defect litigation.

22 Q. And your next employment after that Pacific
23 Property Consultants, please.

24 A. QualityBuilt.com.

25 Q. Approximately when did that begin?

1 A. 1996.

2 Q. What was your position there?

3 A. I started out as -- let's see. I believe I
4 started out as VP of sales.

5 Q. And when you left Pacific Property
6 Consultants, what was your last position there?

7 A. Vice-president of operations.

8 Q. How long had you been vice-president of
9 operations?

10 A. Well, I -- I still worked for Pacific
11 Property Consultants even when I worked for Quality
12 Built, and so that would have been until 2009.

13 Q. So the companies -- you dual-tracked for
14 these two companies for a period of time?

15 A. Correct.

16 Q. And approximately how many years?

17 A. Well, between 1992 and 2009, however many
18 years that is.

19 Q. '92 to 2009 you were working for two
20 companies?

21 A. Yes.

22 Q. Okay.

23 A. Well, no. Two thousand -- 1992 to two
24 thousand -- to 1996 was just Pacific Property
25 Consultants. 1996 to 2009, two companies.

1 Q. And before we leave Pacific Property
2 Consultants, tell us what your role and
3 responsibilities were as the VP of operations?

4 A. I oversaw the office and the -- the
5 scheduling for the technical staff and made sure that
6 reports were delivered to the clients on time, and
7 oversaw accounting and dealt with the insurance
8 carriers for collections. Things like that.

9 Q. And what was your role as VP of sales at
10 QualityBuilt.com?

11 A. I oversaw the sales staff and trained them
12 and created all of the presentations to go out and to
13 present our services.

14 Q. And how, if at all, did the services being
15 provided by Pacific Property Consultants differ from
16 QualityBuilt.com?

17 A. The services for Pacific Property
18 Consultants were all related to projects in
19 litigation, so they did destructive testing, they did
20 expert witness work, prepared cost estimate. They
21 designed repair recommendations for failed building
22 systems. And Quality Built was all on the proactive
23 side. We performed inspections during the course of
24 construction to hopefully prevent construction defect
25 litigation.

1 Q. Okay. And bring us forward for
2 QualityBuilt.com, your -- your role in
3 QualityBuilt.com, did you stay in VP of sales or did
4 you -- did you move up from there?

5 A. I was eventually made the president.

6 Q. Okay. And what was Mr. Luhr's role, if any,
7 in QualityBuilt.com?

8 A. Stan was the CEO.

9 Q. And so how did your two roles differ as a
10 practical matter for -- for somebody like me who is
11 not inside of either company?

12 A. Stan oversaw everything on the technical on
13 the construction side for the company, and I saw
14 everything on the sales and accounting side of the
15 company.

16 Q. Okay. So QualityBuilt.com eventually filed
17 bankruptcy?

18 A. Correct.

19 Q. What was the trigger on that, please?

20 A. Between 700 and 800 builders filing
21 bankruptcy on us, not being able to collect on
22 receivables.

23 Q. I thought it had to do with an arbitration
24 award.

25 A. Well, there was an arbitration award in

1 there as well, but that wasn't the only trigger. It
2 was mostly the economy and --

3 Q. Was the --

4 A. -- business --

5 Q. Excuse me. I didn't mean to interrupt you.
6 Please.

7 A. The sales were falling off. We had
8 \$15 million worth of contracts canceled within a
9 30-day period. We had hundreds of builders filing
10 bankruptcy on us every single month and nobody was
11 building anything new, so new contracts were not
12 coming in.

13 Q. Approximately what year or time frame was
14 that, please?

15 A. Started in 2007 and then just continued on
16 from there.

17 Q. Okay. Was the arbitration award the only
18 multimillion-dollar claim against your company?

19 A. Yes, it was.

20 Q. And what was the nature or basis of that
21 dispute or award?

22 A. There was a dispute between us and Criterium
23 Engineers, our independent consultant, of breach of
24 contract.

25 Q. Were you using quality -- Criteria Engineers

1 [sic] to perform QualityBuilt.com work?

2 A. Yes, we were.

3 Q. In what manner?

4 A. They were the sole independent consultant,
5 so they delivered all of the services outside of the
6 states of California and Hawaii.

7 Q. All right. And we're going to come back to
8 that, but let's just go finish our chronological
9 picture here, please.

10 Tell me about the start-up of Quality
11 Built, LLC.

12 A. Quality Built, LLC purchased the assets of
13 QualityBuilt.com through a 363 sale in the California
14 bankruptcy court in March 2010.

15 Q. And it continues to operate today?

16 A. Yes, it does.

17 Q. Who is -- what is your position today? You
18 told me already. President?

19 A. I'm president.

20 Q. Okay. Who else are -- are officers of the
21 company?

22 A. Brian Kramer is the CEO; and then up until
23 last week, Gary Elzweig was the managing member and --
24 and the head of the board of directors, but he sold
25 stock to Brian. So now Brian owns 60 percent of the

1 company.

2 Q. Before Gary's sale to Brian, how much did he
3 own?

4 A. How much did who own?

5 Q. Brian.

6 A. I believe he owned, like, 28 percent,
7 somewhere in there.

8 Q. And who owns the remaining 40 percent of
9 Quality Built, LLC?

10 A. I own ten percent and -- well -- and along
11 with other employees that own small shares of the
12 common stock. And then there's a group of investors
13 that own the remainder.

14 Q. And did the investors come in at the time of
15 the sale out of bankruptcy or are they more recent?

16 A. No, they came in at the time of the sale out
17 of the bankruptcy court.

18 Q. Does Mr. Luhr own any portion of Quality
19 Built, LLC?

20 A. No, he does not.

21 Q. Does he work for Quality Built, LLC directly
22 or indirectly in any way?

23 A. No, he does not.

24 Q. Has he since 2010?

25 A. Yes, he did. He started out with the

1 company.

2 Q. And what happened to that?

3 A. He was terminated about nine months in.

4 Q. Who terminated him?

5 A. Brian Kramer.

6 Q. For?

7 A. I don't know.

8 Q. Do you have any options to buy any
9 additional portion Quality Built, LLC?

10 A. No, I do not.

11 Q. And who are the other officers of Quality
12 Built, LLC today besides you and Brian Kramer?

13 A. There are no other officers.

14 Q. Who handles the technical side now?

15 A. Brian Kramer.

16 Q. And when did -- did you first work with
17 Brian Kramer in any entity of any type?

18 A. Just Quality Built, LLC. I didn't know him
19 prior to the acquisition.

20 Q. And when did you first work with Gary
21 directly or indirectly, regardless of what entity?

22 A. I never worked with him before the
23 acquisition. I knew him before then, but I didn't
24 work with him.

25 Q. Was Gary in charge of technical matters

1 Q. Okay. And just in layperson's terms, tell
2 me what mass inspection management is. You've used
3 that term several times today. Mass --

4 A. Okay. For example, we have a contract -- or
5 had a contract, it's come to an end now, with Citizens
6 Property Insurance in the state of Florida, and
7 Citizens needed to have hundreds of thousands of homes
8 reinspected to see whether they had particular
9 features for wind mitigation on their homes because
10 they get an insurance policy discount if they do. And
11 to do that you need to use hundreds of different
12 inspectors from different companies.

13 So mass inspection management gives you
14 a platform where you can have each one of those
15 inspectors go out and do their work as their
16 individual companies, but to follow certain
17 procedures, processes, utilize software that puts it
18 into one database for the end user, which in this case
19 was Citizens, so that they could manage that data
20 better.

21 Q. All right. And I know you told me this, but
22 just -- just so I'm clear, who is -- who is the head
23 technical person at your company today?

24 A. Brian Kramer.

25 Q. Brian Kramer. And his qualifications are?

1 until his separation a week ago?

2 A. No. Gary was in charge of acquisitions and
3 financials and that type of thing.

4 Q. Okay. And what is the business of Quality
5 Built, LLC?

6 A. We perform risk assessments and quality
7 assurance for builders and developers. We also do
8 mass inspection management and we offer software for
9 builders to have internal QA programs.

10 Q. And how, if at all, does the business of
11 Quality Built, LLC differ from that which previously
12 was conducted by QualityBuilt.com?

13 A. It's significantly different.

14 Q. How so, please?

15 A. QualityBuilt.com performed audits on work,
16 so we would come on random and periodic time. And
17 Quality Built, LLC has a different program. It has
18 different software. We now come at milestone
19 inspections and we've also expanded our expertise
20 into, as I said, mass inspection management. So we
21 get more into giving guidance and direction to people
22 on how to handle inspections in various areas under
23 different circumstances and to have the results so
24 that they can use that information to control their
25 businesses.

1 A. He's a geotechnical engineer, he has an MBA.

2 Q. Does he have an engineering degree anywhere?

3 A. He's a geotechnical engineer.

4 Q. Excuse me. Does he have an engineering
5 license anywhere?

6 A. Yes, he does.

7 Q. Do you know where?

8 A. No.

9 Q. Okay.

10 A. California, but I know other states.

11 Q. Let's talk about the job that y'all
12 performed at the Gates. Tell me about that, please.

13 A. What do you want to know about it? We did
14 quality assurance on that job.

15 Q. Okay. And what type of quality assurance?
16 In other words, using your language not mine. What
17 type of job was that?

18 A. This was just a -- well, there's some
19 general assumptions to be made before we would come in
20 and do a job. We're there to actually support
21 internal quality assurance for the builders and
22 developers, and then we would come -- periodic site
23 visits at random times and just observe whatever was
24 open and available and collect data on it. And then
25 we would use that data to help train the

1 superintendents, train the trade contractors, if
2 requested, and to help mitigate risk on-site and
3 provide documentation.

4 Q. And did your firm provide any training to
5 the superintendents on-site?

6 A. I don't know. This job was actually
7 serviced by an independent consultant, which is
8 Criterium Engineers.

9 Q. So you don't know if y'all provided training
10 to supervisors?

11 A. I do not know.

12 Q. And do you know whether or not y'all
13 provided training to the trades, if requested?

14 A. I do -- do not know.

15 Q. And who at Criterium Engineers would have
16 been the point person for The Gates job?

17 A. I don't know. My contact would have been
18 with Alan Mooney.

19 Q. And who is Alan Mooney?

20 A. He's the owner of Criterium Engineers.

21 Q. Where are they located?

22 A. Portland, Maine.

23 Q. And do they have a national footprint?

24 A. Yes, they do.

25 Q. Do they have other offices beside Maine?

1 A. I don't know.

2 Q. And on this job -- to start with, let's --
3 let's just talk about you for a second.

4 Did you have any contact of any kind
5 that you can recall with the job that Quality Built
6 performed at The Gates?

7 A. No, sir.

8 Q. Were you aware that it existed?

9 A. Yes, sir.

10 Q. Were you -- were you aware that it existed
11 before it commenced?

12 A. Yes, sir.

13 Q. Did you negotiate it?

14 A. Yes, I did.

15 Q. Tell me about that, please.

16 A. There was a -- a meeting at the offices and
17 I met with several people from the Dinerstein Company
18 and did a presentation on our company and the -- the
19 systems that we utilized, the -- our processes, and
20 then received word that we had won the contract.

21 Q. And the meeting at the offices, were these
22 your offices?

23 A. No, sir.

24 Q. The Dinerstein offices?

25 A. Yes.

1 Q. In Houston?

2 A. I believe it was in Houston.

3 Q. And do you recall who was present at this
4 meeting?

5 A. No, sir.

6 Q. Do you recall if Jack Dinerstein was
7 present?

8 A. I don't recall.

9 Q. Does the name Tom Caltagirone ring a bell?

10 A. It rings a bell, but I couldn't tell you if
11 he was there at the meeting.

12 Q. There's another Dinerstein, perhaps Ted
13 Dinerstein. Does that ring a bell?

14 A. No, it does not.

15 Q. How about Claude Arnold?

16 A. No.

17 Q. Hank Wilson?

18 A. No.

19 Q. Dale Toelkes?

20 A. No.

21 Q. Was there any representative from Lexington
22 Insurance present at this presentation?

23 A. I don't recall that there was.

24 Q. What about any representative from the --
25 the lender or the -- or the -- the finance entity for

1 The Gates being present?

2 A. I don't recall them being present.

3 Q. Do you recall your presentation occurring in
4 Houston at the Dinersteins being somehow facilitated
5 or instigated or originated because of insurance or
6 investors?

7 A. Yes, sir. It was a requirement of the
8 insurance policy that they select a third-party QA
9 provider that was -- that was approved to provide
10 periodic inspections.

11 Q. And that insurance company was Lexington?

12 A. I -- I don't recall that, but I've heard
13 that since.

14 Q. Was Lexington a prior client of yours?

15 A. They're -- yes, they -- they've been a
16 client for a number of years.

17 Q. Predating The Gates in 2006?

18 A. Yes.

19 Q. Was your presentation solely about The Gates
20 or was it on several Dinerstein projects?

21 A. It was -- there was a rolling wrap, I
22 believe. And so it was just a presentation on the
23 policy itself and what we could do to meet the
24 requirements of the insurance policy.

25 Q. And what would -- how would you explain what

1 a "rolling wrap" is to lay people?

2 A. It means that they have the ability to
3 incorporate additional projects into the insurance
4 policy whether they're named at that time or not, so
5 it's more than one project in a policy.

6 Q. And had you performed work for or with the
7 Dinersteins or any of their affiliates prior to this
8 presentation in Houston?

9 A. No, sir.

10 Q. And have you done other projects for or with
11 the Dinersteins or any of their affiliates since this
12 presentation besides The Gates?

13 A. Yes, we have.

14 Q. Tell me about those, please.

15 A. I did not look at them, and I don't recall
16 them. I know that there were three or four of them
17 that we did.

18 Q. Was another project located in Florida? Do
19 you recall?

20 A. I don't recall.

21 Q. Louisiana?

22 A. I don't recall.

23 Q. Would it be whatever other projects are on
24 that rolling wrap?

25 A. Yes, sir.

1 MR. LUCEY: Can you -- well, will you
2 mark them with a plaintiff's label, plaintiff's yellow
3 label, at your convenience?

4 THE COURT REPORTER: Sure.

5 (Plaintiff's Exhibit 349 marked.)

6 Q. (BY MR. LUCEY) I'm handing you what's been
7 marked as Plaintiff's Exhibit 349, which is entitled
8 "Confirmation of Coverage Bound," for people on the
9 phone. It's approximately a seven-page document from
10 the wrap policy materials we've previously received.

11 And on the bottom of the first page and
12 top of the second page, there's six projects described
13 and then they're relisted on the back page. It
14 actually might be seven. Do you see that?

15 A. I do.

16 MR. NORTON: Just -- not to interrupt,
17 just for the regard, just note we don't have Bates
18 numbers on this, so I'm not exactly sure which
19 production it's part of, just for people on the phone.
20 I'll get an email in a second asking me for the Bates
21 numbers, so...

22 Q. (BY MR. LUCEY) So seeing North Ocean
23 Condos, Fort Lauderdale, Florida as the initial job
24 listing, does that refresh your recollection as to
25 whether that would have been another job you performed

1 for the Dinersteins or their affiliates?

2 A. No, sir. I'd have to look.

3 Q. What about Preste Condos, Fort Lauderdale,
4 Florida?

5 A. That doesn't sound familiar.

6 Q. How about Orlando Condos, Orlando, Florida?

7 A. I don't recall these jobs.

8 Q. Amaz, A-M-A-Z, Condos, Los Angeles,
9 California?

10 A. It's possible, but I don't remember it.

11 Q. Wilaman Condos, Los Angeles, California?

12 A. Same thing. It's possible we did the
13 inspections there, but I don't recall it.

14 Q. So am -- am I correct in saying that you do
15 recall doing at least one or more other
16 Dinerstein-related jobs, you just don't recall the
17 identity; is that correct?

18 A. That's correct.

19 Q. And do you have a belief as to whether it
20 was just one more, or four or five more?

21 A. I think it was three or four more.

22 Q. And do you have a recollection as to whether
23 they were contemporaneous or at a different time?

24 A. I -- I don't recall.

25 Q. And if we go to addendum B, the page 6 of 7,

1 I believe, it refers to QualityBuilt.com being
2 retained by the named insured for quality control. Do
3 you see that?

4 A. I do.

5 Q. And the date of this document on page 1 is
6 May 10th, 2006. Do you see that?

7 A. I do.

8 Q. Now, at the time that you made your
9 presentation to Houston, are you aware of whether or
10 not Lexington Insurance Company had already designated
11 you to be the -- the quality consultant and -- and you
12 were just performing some client relations with --
13 with Dinerstein? Or is your memory clear that -- that
14 Dinerstein selected you and you were -- you were later
15 inserted into the wrap-up policy.

16 A. My recollection is they had a choice between
17 a couple of different firms and that they selected us.

18 Q. And so that would suggest to me that your
19 presentation to the Dinersteins would have occurred
20 before May 10th, 2006. Does that coincide with your
21 recollection?

22 A. I don't recall when it was, but that would
23 make sense.

24 Q. On this addendum B, it appears as though
25 Lexington is requiring your company to perform a -- a

1 builder risk assessment before the project commences
2 for the cost of, I believe, \$5,000. Do you see that?

3 A. I do.

4 Q. Did you all perform a builder's risk
5 assessment before the construction of The Gates?

6 A. I don't recall.

7 Q. What would a builder risk assessment have
8 entailed?

9 A. It would be that we would go to a job that
10 was already under construction, so it would be a
11 different job, preferably it would have been in a
12 geographic location where the new projects were going
13 to be constructed. It would be similar type of
14 construction. It would be utilizing the same trade
15 base that you would be using on the upcoming project.

16 And we would do a quality review to go
17 in and to determine how that builder rated in
18 comparison to other builders in the same geographic
19 area building the same type of housing.

20 Q. How could we get an answer to whether or not
21 your company performed that service relating to DMC or
22 Dinerstein prior to the -- the commencement of The
23 Gates?

24 A. I don't know where we could even get that
25 information anymore because that would all be with the

1 old company. And I don't even know that those records
2 exist anymore.

3 Q. If it occurred, who would have performed it?

4 A. I -- it would have been somebody on the
5 technical staff. So it would have been either a
6 QualityBuilt.com direct employee -- I don't believe we
7 allowed Criterium Engineers to ever perform risk
8 assessments, so it would have been a QualityBuilt.com
9 employee.

10 Q. And that would have been somebody working
11 under Luhr on the technical side?

12 A. Correct.

13 Q. And can you give me a list of names of
14 people who were involved in the technical side under
15 Luhr circa spring of 2006?

16 A. I -- I wouldn't recall any of their names.
17 I'd have to look at a list.

18 Q. And if you had performed this risk
19 assessment, to whom would it have been delivered?

20 A. To the client. It would have gone to the
21 Dinersteins.

22 Q. And what would it have looked like or
23 what -- what nature would it have been?

24 A. It's a narrative report. It breaks down --
25 it would break down the categories so -- that we

1 inspected. So if we looked at site work, then there
2 would have been a section on site work that would talk
3 about what we observed, what was found to be in
4 compliance with industry standards, that they did
5 well, maybe if they adopted any best building
6 practices, and also areas that we would see that they
7 could improve.

8 And then this is tied to an algorithm
9 in our software, which would end up giving them a
10 score that was, you know, one to five. And then it
11 would move on to framing, mechanical, electrical,
12 plumbing, exterior cladding, roofing. I don't know
13 all the categories. At one point we added site
14 cleanliness and safety practices, but I don't know if
15 it existed in that time. And then at the end you got
16 a score for each one of the categories, and then at
17 the end it gave you a tier rating for you as a whole
18 on that -- whatever project. Sometimes we looked at
19 more than one project if we could. And so it would
20 give you a rating of one to five.

21 Five was a very good builder who had
22 adopted lots of best building practices and had good
23 quality workmanship, et cetera. Four was somebody who
24 was almost there, but not quite. Three was your
25 average builder. And then one or two were those that

1 had significant room for improvement. Lexington had a
2 requirement that you had to be a three or better
3 builder to even get their insurance policy.

4 Q. And -- and since it was required by
5 Lexington, according to this addendum B, would they
6 have also been provided with a copy of this document?

7 A. Yes, they would have been.

8 Q. And would you have expected this -- this
9 narrative to be in the range of 25 to 50 pages or so,
10 some -- some -- roughly speaking?

11 A. I -- some of them could be quite voluminous.
12 It would depend on how many projects were available
13 for the inspections, how much -- how many photographs
14 were taken. I've seen them as many as 150 pages, and
15 I've seen them as thin as ten pages.

16 Q. Okay. Let's pause here and address the
17 issue of what .com records were retained or are still
18 otherwise in existence and which ones were not. Your
19 company has been able to produce -- LLC has been able
20 to produce to us some of The Gates records,
21 photographs, spreadsheets and what have you.

22 Can you help me delineate what records
23 were preserved and what records were not?

24 A. Yeah. It's real easy. Quality Built, LLC
25 purchased, as an asset, the software and the database

1 and everything contained within the database. And
2 that's all of the records that they brought over from
3 QualityBuilt.com on all of the projects. And then
4 only on the projects that were identified as an asset
5 that was to be purchased did we bring over any paper
6 files, any plans, any accounting records, any job
7 files that existed outside of the database.

8 Q. Okay. So the entire database came over with
9 any observations in it and any photographs in it?

10 A. Correct.

11 Q. Okay. Beyond that, files only came over if
12 they were somehow specifically listed in the assets
13 being purchased?

14 A. Correct.

15 Q. And do you have a list of those assets that
16 were purchased that you --

17 A. There was a list on the -- the asset
18 purchase agreement.

19 Q. Okay. And --

20 A. And then we had -- Quality Built, LLC had, I
21 believe, 90 days to go through and to reject any, and
22 they did. They rejected some of them and we returned
23 that paperwork.

24 Q. And to whom did you return it, please?

25 A. To Stan Luhr.

1 Q. And do you know what he did with it?

2 A. He housed it for a while and then after a
3 while, from what I understand from other statements
4 that he made, he got rid of all of the paper documents
5 because they were just taking up room in his
6 warehouse.

7 Q. Do you know approximately when that
8 occurred?

9 A. I -- I believe it was in 2012, it may have
10 been 2011, somewhere in there.

11 Q. Okay. And so as -- the risk assessment is
12 not part of the software system that you're talking
13 about, you -- you wouldn't have ordinarily received it
14 in the bankruptcy sale?

15 A. Correct.

16 Q. And when Criterium was your largest
17 subcontractor -- am I -- is that correct? Were they
18 your largest subcontractor?

19 A. Yes, sir, they were.

20 Q. When they were your largest subcontractor
21 performing these inspections for a period of years or
22 so, did they have a copy of your software?

23 A. Yes, they did.

24 Q. And they would have had a copy of any of the
25 observations or photographs they generated with that

1 software?

2 A. Yes. The software was kept in our sever, so
3 it's not like we gave them their own software for them
4 to have. They've worked off of our servers. And then
5 they would take their computers out in the field to do
6 their data collections, and when they synchronized,
7 all of the data went back to our servers. So they
8 didn't have anything independent to what we operated
9 off of.

10 Q. And where were those servers located,
11 please?

12 A. At that -- that time, they were located in
13 San Diego and in Denver, Colorado or Aurora, Colorado.

14 Q. And where are they now?

15 A. The new company has their servers in Fort
16 Lauderdale and San Diego.

17 Q. And did the new company buy the old servers?

18 A. Yes, they were part of the asset purchase.

19 Q. And when Criterium synched with the servers,
20 would they essentially lose their data into the server
21 or would they have a mirror copy of the data on the
22 files that they were working on?

23 A. You always had the data that you'd already
24 previously collected, or that anybody else collected,
25 visible to you on your device.

1 Q. Were the email records part of the sale from
2 .com to LLC?

3 A. No, sir.

4 Q. Did Criterium have Quality Built email
5 addresses?

6 A. I believe they did.

7 Q. Did Criterium, when conducting Quality Built
8 business, act and appear as if they were simply
9 Quality Built agents or employees?

10 A. They wore Quality Built shirts, Quality
11 Built hats. Their business cards would say,
12 Independent consultant for Quality Built. They
13 actually had a Criterium Engineers' logo and a --
14 matter of fact, their shirts did, too; they had both
15 the Criterium Engineer and the Quality Built logos on
16 them. Same for the hats, all the branding was
17 co-branding.

18 Q. And did you -- I believe we -- we
19 established that you did negotiate The Gates
20 engagement?

21 A. I did.

22 Q. And so would there be a document that would
23 set forth all of the services that your company would
24 be providing?

25 A. There would have been a contract, yes.

1 Q. And were contracts -- were the copies of the
2 contracts part of the sale from LLC to -- excuse me,
3 from .com to LLC?

4 A. No, sir. Only contracts that we were
5 actually acquiring and would continue servicing. Any
6 contracts that were completed were left with .com.

7 Q. Okay. And -- and what are the chances that
8 there was, in fact, a Dinerstein or Dinerstein
9 affiliate contract as opposed to a handshake?

10 In other words, should I expect to find
11 a Quality contract in the Dinerstein records?

12 MR. NORTON: Object to the form. You
13 may answer.

14 A. There -- oh, there definitely would have
15 been a contract because our policy was, we did not
16 begin work without a signed contract.

17 Q. (BY MR. LUCEY) And was the contract a
18 standard form of Quality Built contract that you had
19 that you used with most clients?

20 A. We would have started with that. Although,
21 we did allow negotiation of the contract, and at
22 certain times, we would review and make edits to
23 client contracts. But our standard operating
24 procedure was to always start with our contract.

25 Q. And your contract had a set of standard

1 terms that you all had -- had developed over the years
2 that you were comfortable with?

3 A. Correct.

4 Q. And what did your standard contract provide
5 for in terms of indemnification?

6 A. I believe that QualityBuilt.com was
7 comparative fault.

8 Q. And could you explain that to us in
9 layperson terms, please?

10 A. It means that if we did something specific,
11 then -- and the Court said -- determined that that is
12 something that caused the damage at the site, then we
13 would be responsible for it. But the contract also
14 outlined that we did not perform any design work, we
15 did not perform any installation of materials, any
16 selections of materials, any selections of the trades
17 or any improvements to the property, whatsoever.

18 Q. Okay. And before we leave -- before we get
19 further into The Gates and leave Plaintiff's Exhibit
20 349, let me ask you about addendum A.

21 There's a reference to an entity named
22 DBH Resources conducting some front-end due diligence.
23 Are you aware of who DBH Resources -- what -- what
24 this entity is?

25 A. Yes, sir.

1 Q. Tell me about it, please.

2 A. They're a wrap administration company.

3 Q. Try me again.

4 A. Wrap administration company.

5 Q. Okay. Okay. Wrap. And -- and what was
6 their role as -- as you perceive it, related to this
7 arrangement?

8 A. It was their responsibility to make sure
9 that all of the trade contractors performing work were
10 enrolled in the wrap and that they provided
11 appropriate certificates of insurance. And they did
12 what they also called a risk assessment, but it was
13 different than the risk assessment that we did because
14 ours was focused on construction practices and they
15 were focused on management practices.

16 Q. And would your firm have had interaction
17 with them on this job?

18 A. No.

19 Q. And what -- what would be the management
20 practice focus? Explain that to -- give me some more
21 insight into what that would be.

22 A. I -- I don't actually know.

23 Q. I assume it would be the nine items listed
24 further down in addendum A?

25 A. I could only assume that as well because I

1 never performed this type of work.

2 Q. Okay. And you would not have got a copy of
3 their report?

4 A. No, sir.

5 Q. Did your company perform a plan review at
6 The Gates?

7 A. Yes, we did.

8 Q. And tell us what a plan review is.

9 A. It's a review of the architectural plans.
10 We have a list of items that we go through to make
11 sure that the plans, you know, have no ambiguous
12 details, that they have no missing details, that the
13 notes are clear. The intent is to walk away with a
14 set of plans so that the trades do not have to make
15 any interpretations in the field, but can be provided
16 clear direction through the construction documents.

17 Q. And what -- what does your company
18 typically -- how -- how does your company communicate
19 its plan review to the client?

20 A. QualityBuilt.com? How did they do it?

21 Q. Yes.

22 A. I -- I believe that they sent a written
23 report directly to the client when it was completed,
24 and it was a two-step process. You sent the initial
25 technical plan review, which had all of your comments

1 which may request information on clarification or to
2 ask questions and then to suggest that they make
3 changes. And then the client has the ability to
4 respond to them and either state why one of our
5 suggestions was not applicable or to provide
6 documentation in support that it is being provided to
7 the trades or to make changes to their documents that
8 they have us check off and say that it was now
9 provided.

10 Q. Okay. And what happens -- what -- how do
11 you all address it, if -- if you and the client have a
12 basic disagreement regarding the level or quality of
13 the details in the plans?

14 A. Well, the -- the -- one of the
15 QualityBuilt.com architects or technical service
16 people would speak to them until you came to some sort
17 of resolution or it would have remained as an open
18 item on the technical plan review.

19 Q. And what is the significance or ultimate
20 effect of an open item on the plan review?

21 A. It -- it can be a number of things. I mean,
22 if we -- if we truly believed that this was a
23 significant item that would have caused substantial
24 problems during the course of construction, then an
25 unaddressed open item would have been reported to the

1 insurance carrier as part of our requirements. If you
2 had an open item that was maybe just a suggestion to
3 move from a building code to a best building practice
4 and they decided not to adopt that best building
5 practice, then there would -- there would be no
6 reporting on it because they would be at least meeting
7 the minimum code.

8 If you had an open item that was just
9 for a clarification and they provided documentation
10 showing that it was being addressed, then we would
11 close it out. And then sometimes the response to an
12 open item would be, Let's go out into the field, let's
13 figure out how we're going to do it there and then
14 we'll provide you as-built and then that can be
15 incorporated in. So there's lots of ways to close out
16 open items on technical reports.

17 Q. All right. So as I'm hearing it, there's --
18 there's at least four steps to the plan review. One
19 is -- is that Quality Built provides their comments to
20 the client. Second is Quality Built gets a response
21 back from the client to -- to these comments. Third
22 is the client and Quality Built work together to
23 resolve different differences, be it immediately or
24 later in the field or what have you. And fourth, if
25 there is an important item that you don't reach

1 agreement on, Quality Built notifies the carrier.

2 A. Correct.

3 Q. Am I missing any steps in the plan review
4 process?

5 A. No, sir.

6 Q. Okay. Did a carrier get notified about any
7 open items relating to The Gates?

8 A. I don't know.

9 Q. Who performed the plan review for Quality
10 Built?

11 A. I don't know.

12 Q. Who did Quality Built work with at
13 Dinerstein or DDC to resolve open issues with the plan
14 review?

15 A. I don't know. I wasn't involved in the
16 specifics of this project, nor was I ever involved in
17 the technical side of the business.

18 Q. Do you know if there were open items
19 remaining after the plan review was completed?

20 A. I don't believe there were, but I -- I'm not
21 positive on it.

22 Q. And what is your basis for believing that
23 there were not any open items left after The Gates
24 plan review?

25 A. Because I saw the final report saying that

1 there was no open items, and I believe it would have
2 been noted if there had been, even with the plan
3 review.

4 Q. So that leads you to believe that -- that
5 Quality Built found the ultimate plans for the
6 construction of The Gates to be reasonable?

7 A. I don't know. Again, I am not a
8 construction expert and I'm not here to say anything
9 about the quality of construction or the technical
10 side of the businesses. So I don't know if they found
11 them reasonable or not. I don't know if they found
12 them to meet industry standards, to exceed industry
13 standards, but at some point, they closed out the open
14 items and moved on.

15 Q. Okay. And your company would not have
16 closed out the open items unless you believed that
17 they'd had a reasonable solution?

18 A. Unless -- correct.

19 Q. So ultimately, your company believed that
20 the plans were reasonable?

21 A. QualityBuilt.com must have, or at least the
22 items that were presented in the technical plan
23 review.

24 Q. And when you described the -- the plan
25 review to me, you called out specifically

1 architectural plans. Were you indicating to me that
2 your company did not review the -- the structural or
3 engineering plans?

4 A. We did not review structural to redo
5 calculations, anything like that, but we did look at
6 the structural plans for connectors to look at
7 measurements, that type of thing. We did not look at
8 mechanical, electrical or plumbing, except for
9 locations and penetrations. We did not look at
10 landscaping plans at all unless it was waterproofing
11 of planters. So there were limited sections of the
12 plans that we did look at.

13 Q. Okay. Going -- getting -- getting past,
14 getting beyond plan review, what role was your company
15 engaged to perform at The Gates during construction?

16 A. We did quality assurance. So I believe
17 that -- since this is a Lexington, I'm assuming that
18 it was the standard services that they typically
19 required, which is what we called, at
20 QualityBuilt.com, a Level 4 QA Protocol, which meant
21 that we spent between three and four hours per unit
22 over the life of that unit performing random
23 inspections and then -- so we would show up at the
24 site, we would look at all of the systems and
25 components that were open and available. We would

1 record good construction practices and we would take
2 photographs and we would report any observed anomalies
3 to the superintendent for him to follow-up and correct
4 on.

5 Q. So with 158 units, your company was
6 budgeting, at a level 4, roughly, 600 hours of
7 inspections?

8 A. Correct.

9 Q. Okay. And let's -- let's break down, if you
10 would, please, for me the actual mechanics of what
11 your company would do. A guy shows up unannounced,
12 right?

13 A. No. They would actually work with the
14 superintendent to make sure that they were available
15 because we wanted to check in, we wanted to check out.
16 But it would typically be if you were going on a
17 Wednesday you would call on a Tuesday and say, you
18 know, I'd like to come by the site tomorrow, are you
19 available, what -- what's the stage of construction
20 since I was last there? If they were there every few
21 days then they wouldn't have to ask that question.
22 They may ask if -- if some anomalies that they had
23 observed before had been closed out and they would
24 agree, you know, what time and -- and that they could
25 meet at the trailer.

1 They would check in, walk the site,
2 they would check out. They would identify any tags
3 that they hung. They would ask if they needed any
4 training, did they have any questions, would they like
5 to re-walk the site with them to see some of the
6 examples of things that they brought up, and they
7 would ask if they needed any help closing out any of
8 the open items that were already on the list. And
9 then they would leave.

10 Q. Okay. I'm going to go back to the beginning
11 and ask you some follow-up questions on each --

12 A. Sure.

13 Q. -- each thing you just said. You started by
14 saying they would check the availability of the
15 superintendent.

16 A. Yes.

17 Q. Was there any protocol with regards to
18 inspecting with the superintendent as opposed to an
19 assistant superintendent?

20 A. I don't believe so. I think a builder
21 representative was acceptable.

22 Q. Okay. And do you know what superintendent
23 they were coordinating with at The Gates?

24 A. I do not.

25 Q. Does the name Sean Gambini ring a bell?

1 A. I've seen his name on documents, but I don't
2 know who that is.

3 Q. Was there any minimum level of -- of
4 industry competence that was needed in the
5 superintendent for the Quality Built representative to
6 be able to do his job properly?

7 A. I'm sorry. Could you ask that again?

8 Q. Sure. Was there any minimum level of
9 competence in -- needed in the Quality Built host
10 on-site for the Quality Built representative to be
11 able to do his job properly?

12 A. I don't know if there was any requirements
13 or not. If it was somebody -- we would tell the
14 builder it has to be somebody who is familiar with
15 construction, integration of systems and components,
16 the proper sequencing according to their schedule, and
17 somebody that had the authority to stop construction
18 if necessary to make sure that items are corrected.

19 Q. Okay. So he checks in, he walks the site,
20 perhaps with the supervisor or perhaps without?

21 A. Correct.

22 Q. And he may notice an anomaly. Is that
23 correct?

24 A. Correct.

25 Q. And why do you use the word anomaly?

1 A. It's just the -- people don't like hearing
2 defect or -- it's just a term that we've come up over
3 the years that people find more palatable, but it's
4 something that falls below the standard that should be
5 held in the field.

6 Q. Okay. What does the Quality Built inspector
7 do -- actually do when he sees an anomaly?

8 A. In the software program that they use, they
9 would take that checkpoint and check it off as a U,
10 which is unacceptable, which means that they did not
11 meet the standard contained within the checkpoint.
12 They have these orange tags called QA tags and the
13 software would generate a QA tag number and they would
14 write that on the tag along with any other messages
15 that they had.

16 There was a list of the more
17 significant trades on there, so if they wanted to send
18 a message to the trade they would check off which box
19 it was located on and then the tags were -- they were
20 peel and stick, so they could either peel off the back
21 and stick it near the anomaly or they could use a tag
22 camera if it was wood framing or -- or something to
23 attach it, and then they -- the software also gave
24 them the ability to break down the location so it
25 could say what room or where it was in the elevation

1 and such. And then they would save that item so that
2 at the end of the day when they synchronized they
3 could print out an open item report, they could leave
4 it and it would also put that information into the
5 database.

6 Q. Is the site inspector carrying around a
7 laptop or something else?

8 A. Yeah. During that time period,
9 QualityBuilt.com was using Panasonic Toughbooks.

10 Q. Which is a laptop?

11 A. It's a military grade -- more like a
12 military tablet than a laptop.

13 Q. Okay.

14 A. They're recognized.

15 Q. Does the inspector put a tag on every
16 anomaly?

17 A. The practice is that they should, but if
18 they observe -- every anomaly they observe. Now,
19 please understand that our role and responsibility was
20 not to check everywhere that something should occur.
21 So for example, if we're in and we're inspecting the
22 windows and the unit has eight windows, they may look
23 at two or three of those windows. If they observe an
24 anomaly they might put a tag on only one of the
25 windows and then write "multiple." So that should

1 have been an indicator to the trade and to the
2 superintendent that this condition exists on multiple
3 windows, but they might not put a tag on every single
4 window that existed.

5 Q. And the word "multiple" would go in the tag
6 or in the software or both?

7 A. It should go in both.

8 Q. And the tag number, is that just a daily
9 number, one to a hundred, or is it some -- some
10 magical number that carries through the software
11 forever?

12 A. It's -- it's a sequential numbering, so I
13 believe -- again, this is the old company and the old
14 software, so I'm going off memory, but I -- I believe
15 that it was cumulative for the project at that time.
16 And so if, you know, you were on tag number 300, then
17 it would come up 300. The next one would be 301, 302.

18 Q. And then the next comment you made that was
19 to the effect that if you were a more significant
20 trade you would already be in the system and they
21 could check your box. Are you saying that that trade
22 would get an email copy of the observation or what
23 does it mean to check the box for the trade?

24 A. No, I think you misunderstood me.

25 Q. Probably.

1 A. More significant trade on the tag. So the
2 tag said QualityBuilt.com and then it had a space to
3 write the tag number and then it would say framing,
4 mechanical, electrical, plumbing. I don't remember
5 what all was on the tags. And then at the bottom
6 there would be, like, one little line to write the
7 comments like multiple or to draw arrows.

8 And the reason that we did that is
9 because the trades learned that we were there
10 performing these inspections and that -- they would
11 look -- they'd start to look for these tags and if
12 they saw a tag hanging there and they were the framer
13 and the framer was checked, they could look at that
14 and they could kind of look around. And they got to
15 where they could see what the anomaly was that we
16 wanted corrected before the report was even issued at
17 the end of the inspection.

18 So it was just something to try to set
19 up as early of an alert as possible. At that time,
20 QualityBuilt.com, the old company, it did not -- the
21 software did not tie directly to the trade
22 contractors. It went to the superintendent and the
23 superintendent was responsible for distributing that
24 to the trades and to making sure that it was corrected
25 and then getting that information back and signing it

1 off in our system.

2 Q. Did the -- did Quality Built have any
3 contact of any kind that you're aware of with the
4 trades, with the subcontractors?

5 A. On this project, I don't know if they had
6 any direct interaction. If our -- our standard
7 operating procedure at that time was always that if
8 the superintendent wanted you to provide training to
9 them, then you could, but it had to be in their
10 presence because we did not want them directing the
11 means and methods of any of the trade contractors.
12 They were only there to give a demonstration of what
13 is a good building practice, what is the standard that
14 should be applied on that project and nothing more.

15 Q. And did the -- did the Quality Built
16 inspector have the capacity to print his report while
17 he was on-site?

18 A. Yes, he did.

19 Q. They had a printer in the truck?

20 A. They did. They had portable Cannon printers
21 that were issued to them.

22 Q. Okay. And that would a daily report, daily
23 inspection report?

24 A. It would be at the end of each one of the
25 inspections, but the reports were always available

1 online as well. So anybody that had a role, an access
2 role to those reports, could look in and see a number
3 of different reports.

4 Q. What was the -- what was the observation --
5 what was the anomaly observation close-out procedure
6 employed at The Gates?

7 A. It -- as I described, it would be that the
8 superintendent would receive the list and then once
9 they confirmed that it had been corrected, they would
10 go into the Quality Built Information Network, go into
11 the open item, and click off and enter the name of the
12 person that verified that it had been corrected.

13 Q. The superintendent would enter the name of
14 the person who had verified correction?

15 A. Correct.

16 Q. And that would go into your software?

17 A. Correct.

18 Q. And were you all using bar codes for any of
19 this?

20 A. At that time I think we had progressed
21 beyond bar codes. At one time, our system did have
22 bar codes, but I don't believe it was at that -- at
23 The Gates. That would have been later.

24 Q. And did the superintendent at The Gates or
25 the assistant superintendent have some sort of

1 handheld digital device that allowed them to close out
2 open items?

3 A. It's possible because we did offer that. It
4 was an upsell, but if they did have Closure Link,
5 then, yes, they would have been given a personal
6 device where they would be able to close out using
7 that device. And that device may have had a bar code
8 on it, but I'm not positive.

9 Q. And did the inspector have a separate
10 digital camera he was using to photograph the
11 observations?

12 A. They did have a separate digital camera so
13 that they could flash and they could have zoom, but
14 any photograph that they took was imported into the
15 software.

16 Q. And how was the photograph linked with the
17 verbal observation in the software?

18 A. The caption, the -- the standard of the
19 checkpoint became the caption of the photograph.

20 Q. Did you have the client uploading
21 photographs to document close out?

22 A. They -- if they had Closure Link they would
23 have had that capability, I believe, but -- well,
24 let's see. Would they? No, I don't think at that
25 time they would have because it would have just been

1 a -- you know, a -- a PDA that they used to have that
2 they would run the software called Closure Link. And
3 I don't believe that that had the ability to take
4 photographs.

5 Q. Did Quality Built itself play any role in
6 the close out of open items?

7 A. No.

8 Q. Did Quality Built itself play any role at
9 all in checking to see that anomalies had been
10 corrected?

11 A. No. If we were on-site and we saw something
12 had been closed out they may have randomly closed one
13 or two, but unless they personally observed the
14 correction then they were not to record correction.

15 Q. And what reports would Quality Built have
16 been providing to Lexington during this process?

17 A. Lexington never required reports on a
18 regular basis from Quality Built unless there was an
19 issue that was not being addressed by the contractor,
20 by the general contractor of the builder. They just
21 let it run its course unless there was something that
22 needed to be brought to their attention. And then at
23 the end they would have requested a copy -- from the
24 Dinerstein Companies, not from us, a copy of the final
25 report. They also -- they also required -- and our

1 software did this automatically, any open item that
2 was open for longer than 30-days would have been
3 automatically reported by the software to Lexington.
4 And then the clients would have also gotten emails
5 every single week telling them what open items they
6 still had and the aging of those open items.

7 Q. Did Lexington have access to the database?

8 A. In 2006, I -- I believe they did, but I'm
9 not positive.

10 Q. Somewhere in the materials are web pages.
11 I've seen some reference to a close-out package that
12 you all give a client when you're done with a job. Is
13 there such a thing, a close-out package?

14 A. There's a final report that's generated and
15 it's in the photographs.

16 Q. And in what medium is it given to the
17 client?

18 A. It's a -- actually, a PDF that's generated
19 automatically by the software and they would go --
20 they would receive an email that tells them that their
21 final report is available in their final documentation
22 file and to go into the Quality Built Information
23 Network and to download that onto their system.

24 Q. Back in 2006, was -- was the capacity there
25 for downloading this size of information or was it

1 burned to a disk?

2 A. It could have possibly been burned to a
3 disk.

4 Q. And what information was in this close-out
5 package? In other words, are you -- are you telling
6 me that they got a copy of all 30,000 photographs or
7 what -- however many it was?

8 A. However many photographs were taken they
9 would have been provided. The final report would just
10 give very basic information which says that we
11 performed inspections from this date to this date on
12 the following systems. And then I believe at the time
13 the final report would also break down for each one of
14 the systems' what units any data collected for that
15 system was -- was observed.

16 So for example, framing. Any of the
17 units where framing checkpoints were collected would
18 be underneath there.

19 Q. Let's talk about checkpoints.

20 Is there a list of checkpoints?

21 A. There's a database of checkpoints.

22 Q. And when you say database, is it -- is it --
23 I mean, a list would be one dimensional. What changes
24 in -- what changes to the list that makes it database
25 suitable as opposed to a list?

1 A. The QualityBuilt.com's database would be
2 that the inspector would select first of all, the
3 builder, then the project, and then within the project
4 they would select the system that they were looking
5 at. So it might be plumbing, and then it would be the
6 component that they're looking at, you know, copper
7 piping for a specific person, and so it drills down.
8 And each time they make a selection the number of
9 checkpoints available to them gets filtered out and
10 becomes, you know, more finite.

11 Q. And how does -- or did Quality Built build
12 its database, it's checkpoint database for a
13 particular job?

14 A. Well, QualityBuilt.com did not build for the
15 job. You always had this -- the database, the entire
16 database available to you. And then the inspector
17 would use whatever was open and available to use these
18 filters to get down to what they were observing.

19 Q. So QualityBuilt.com was using a standard
20 list of checkpoints for its construction?

21 A. Yeah. They would use the -- well, again,
22 the database. And so you could use different filters
23 to get different checkpoints so it was -- it wasn't
24 stationary, it was dynamic. You could make changes
25 based on, you know, what you've selected on the

1 computer.

2 Q. Excuse me. The database appears to me
3 the -- from what you're telling me, that -- that the
4 selection can take you into a larger level of detail,
5 but it doesn't -- but the level of detail, the
6 specifics of the detail that is available to you in
7 the database doesn't change?

8 A. The database itself would change all the
9 time because we were constantly adding checkpoints to
10 it, but you're correct. It's not -- and you would
11 always have the ability to do a custom checkpoint, if
12 you wanted to, so if you were in the field and you saw
13 something that you couldn't find a checkpoint, then
14 QualityBuilt.com had a policy of allowing what they
15 called nearest checkpoint.

16 So you could select a checkpoint that
17 was almost there or you could select a -- I don't know
18 what -- I don't remember what QualityBuilt.com called
19 it, but there was something you could click on and
20 then you could enter in a custom checkpoint as well.

21 Q. What effort, if any, did Quality Built make
22 for The Gates job to adapt the checkpoints to the
23 particularities of the Clerkley Watkins' architectural
24 design for The Gates job?

25 A. I don't know. That's on the technical side.

1 Q. As a matter of course, would there have been
2 an alteration in the database based upon the plans?

3 A. I don't know.

4 Q. Was the checkpoint list part of the assets
5 that LLC bought from .com?

6 A. Yes, it is.

7 Q. Approximately how many checkpoints is it
8 today?

9 A. Probably close to 10,000.

10 Q. Approximately what size would it have been
11 in 2006?

12 A. I believe it would have been close to six to
13 8,000.

14 Q. Are you able to tell from that list what
15 checkpoints have been added and what checkpoints are
16 older?

17 A. Yes. But Quality Built, LLC doesn't use
18 that database in that format anymore.

19 Q. So that database went stagnant some period
20 ago?

21 A. There's, like, one or two lingering jobs
22 that utilize that, but that's it.

23 Q. So there -- there is a list of checkpoints
24 that can be printed if we want to understand what
25 codes are used at The Gates; is that correct?

1 A. There is a -- you actually showed me that
2 report which tells me -- that spreadsheet you showed
3 me?

4 Q. Yes, ma'am?

5 A. Those are the checkpoints that we utilized
6 on that side.

7 Q. Okay.

8 A. That is what those represent.

9 Q. So every checkpoint used at The Gates, if --
10 if that's a final report on The Gates, and we had
11 38,000 lines in there -- we're going to try to mark an
12 exemplar when we get it from the printer this
13 afternoon, but every checkpoint used at The Gates
14 would be found on that spreadsheet somewhere?

15 A. Correct.

16 Q. And you could sort that spreadsheet by the
17 checkpoint column and then you'd have a list of
18 checkpoints?

19 A. Well, I couldn't, but maybe you could. Yes,
20 those would be all the checkpoints.

21 Q. And as I understand it, there's -- there's
22 actually -- the checkpoints are divided into either 14
23 or 16 different trades?

24 A. I don't know.

25 Q. And the -- the checkpoints have, as I

1 understand it, a preassigned level of importance?

2 A. Yes, they would have a risk factor.

3 Q. Risk factor runs from one to five?

4 A. No, those risk -- risk factors on the risk
5 assessments go one to five, but the risk factors on
6 the checkpoints -- oh, wait, they did, too. They went
7 one to five as well -- as well. You're correct.

8 Q. Okay. Five is life safety?

9 A. Correct.

10 Q. Four is?

11 A. Water intrusion.

12 Q. Okay.

13 A. Three is durability issues. And then ones
14 or twos are varying degrees of cosmetic items.

15 Q. Great. Looking at a couple --

16 MR. NORTON: You want to take a quick
17 break?

18 THE WITNESS: Yes, I would.

19 MR. NORTON: I think she'd like to take
20 a quick break, if you don't mind.

21 MR. LUCEY: Sure.

22 (Break from 2:14 p.m. to 2:21 p.m.)

23 (Plaintiff's Exhibit 350 marked.)

24 Q. (BY MR. LUCEY) I'm going to hand you
25 Plaintiff's Exhibit 350, which is the spreadsheet that

1 we've been referencing that I showed you on the laptop
2 earlier. And just so we have a clear record on this,
3 to get this into printable size I hid a couple columns
4 like the shop road address that gets repeated 36,000
5 times, and I had to shrink a couple of these columns
6 again, but this is -- this is the spreadsheet that you
7 and I were referring to in our conversation a few
8 minutes ago; is that correct?

9 A. Yes, sir.

10 Q. And -- and assuming that this is the last or
11 the latest version, what I had them do is print the --
12 the first ten pages and then the very last page.

13 MR. NORTON: Object, just because I
14 don't think it's the last version, if I understand it
15 right.

16 MR. LUCEY: This is the only version I
17 ever received from their company in ESI. Do you --
18 I'm not --

19 MR. NORTON: Yeah, I -- I'll just state
20 the objection for the record. I'm not doubting you on
21 that, I just --

22 MR. LUCEY: Do you have a later ESI.
23 version?

24 MR. NORTON: I don't, but I think
25 it's -- I mean, I can tell you why if you're okay with

1 it.

2 MR. LUCEY: Please.

3 MR. NORTON: I think that this
4 indicates that there are some -- there are still some
5 open items and I think that there's a final report
6 indicating that, like it or not, were all closed out.

7 THE WITNESS: Well, this would actually
8 tell you if it was -- just because it's a U, that just
9 tells you that it was observed as a U.

10 MR. NORTON: At some point?

11 THE WITNESS: Yeah.

12 MR. NORTON: Okay.

13 THE WITNESS: But there should be a
14 corresponding one that, again, you know, with
15 QualityBuilt.com -- oh, yeah, I can see it now. It
16 gets changed to an AT, which means accepted by trade,
17 and those should correspond and close them out.

18 MR. NORTON: And so the last version
19 should have that AT indicator if all the items were
20 closed out?

21 THE WITNESS: Correct. And it looks as
22 though somebody was taking photographs with those ATs
23 because you have -- on the pages where it says "photo"
24 under it. So that means that somebody was taking a
25 photograph showing the correction.

1 Q. (BY MR. LUCEY) All right. Well, let's do
2 the -- first of all, let me show you the computerized
3 version on the screen and compare it to the last page,
4 and just so we can authenticate what's been marked.
5 Here on the first page we start at project 113 and
6 then going to the very last page we have line 37,663.
7 Do you see that?

8 A. No.

9 Q. On the computer screen.

10 A. Oh, on the computer screen. Yes.

11 Q. And is that the same last line that we have
12 on the print copy start/stop consultation time over
13 here?

14 A. It appears to be, yes.

15 Q. And in between here is 37,000, roughly,
16 other observations on the screen?

17 A. Yes.

18 Q. And counsel for the Dinerstein Companies has
19 raised some issue regarding whether this is the latest
20 one or not. Do you -- can you give -- give us any
21 insight as to whether or not it would be the latest
22 one?

23 A. There would only be one. I mean, this is an
24 export out of a database into Excel spreadsheet, and
25 so it's not like the data could change. It might

1 change order or something, but the database is the
2 database.

3 Q. Okay. And if we can go back and go across
4 the first page on the names, the first two columns are
5 self explanatory. The displayed name is the unit
6 location that they're inspecting within the project,
7 correct?

8 A. Correct.

9 Q. The inspection date is self explanatory.
10 Checkpoint system, subsystem component, type and
11 checkpoint, those one, two, three, four, five -- those
12 five columns, is this progressing into an increased
13 level of detail in each of these five columns?

14 A. Correct.

15 Q. So there's -- each system, such as we see
16 site as the first system here, will have a variety of
17 subsystems associated with it?

18 A. Correct.

19 Q. And each subsystem will have a variety of
20 components associated with it?

21 A. Correct.

22 Q. And each component will have a variety of
23 types associated with it?

24 A. Correct.

25 Q. And then the next column is checkpoint. And

1 this would actually list the comment that the
2 inspector had made on each observation; is that
3 correct?

4 A. Correct. These are positive statements that
5 contain the standard that should be met in the field.

6 Q. And are these checkpoint comments -- are --
7 for the most part, are these pre-programmed into the
8 software or is the -- is the inspector typing these at
9 his own liberty?

10 A. No, for the most part they are in the
11 database and they select it.

12 Q. And is this a list of anomalies or is this a
13 list of observations, some of which may be anomalies,
14 some of which may not?

15 A. The latter.

16 Q. And is there -- how do we tell on this
17 particular database list whether the observation
18 started as an anomaly?

19 A. If it has a U, it was an anomaly. It means
20 that the standard contained within the checkpoint. So
21 on page 2 you see a U. It says, Anchor bolts are
22 installed per schedule. Since that has a U, it means
23 that an observation was made where the anchor bolts
24 were not installed per schedule, so that needed to be
25 corrected.

1 Q. And after it's corrected, does the U get
2 changed to an A?

3 A. The U gets changed to an AT.

4 Q. Okay. What does that mean?

5 A. Accepted by trade.

6 Q. And is there any other possible answer
7 besides A, U or AT?

8 A. Well, let's see. I think that's all
9 QualityBuilt.com had as a choice. It changed over the
10 years because at one point we also allowed the answer
11 of NA, not applicable, but I think that came after
12 with Quality Built, LLC. We also allow the answer of
13 concealed so it would be a C, but that would be the
14 only choices.

15 Q. And so it's your testimony a U never gets
16 changed to an A, it only gets changed to an AT?

17 A. Correct.

18 Q. So any A we see here was always an
19 acceptable observation?

20 A. At the original inspection, correct.

21 Q. And ATs are Us that have been corrected and
22 changed to an AT?

23 A. Correct.

24 Q. And why would there still be a U on this
25 database that we procured from your company last year?

1 Q. And would that mean that the sign-off photos
2 were being uploaded to your company's database by the
3 client?

4 A. Yes. I believe you indicated they were
5 using Closure Link.

6 Q. Yes, I think we see it on one of the
7 invoices.

8 A. Okay. So if they were using Closure Link
9 then, you know, they would take that at the same time
10 and they would be able to synchronize. I -- I don't
11 really remember that hardware and the different
12 devices that they picked were available, but I mean,
13 from this, I would assume that it also took
14 photographs.

15 Q. Okay. And let me show you the -- the
16 hyperlink in the sell address for the very first
17 photograph referenced here because our hyperlinks
18 didn't work, and I'm wondering whether you can explain
19 to us what the hyperlink is. In the very first photo
20 hyperlink on page 1 of Exhibit 350, the formula is
21 "=if(PA<>"null",(hyperlink(P9,"photo")))"

22 Do you see that?

23 A. I do see it.

24 Q. Do you know what that's linking to or how
25 that links?

1 A. Because they asked for every checkpoint that
2 was answered each time it was answered. So we gave
3 you every answer for every checkpoint.

4 Q. Is -- does that mean that there's two
5 answers to here on some checkpoints?

6 A. Correct. There would be a U and then there
7 would be an AT. So for example, the U that we see on
8 page 2, Anchor bolts are installed per schedule, it
9 appears that that exact same checkpoint is on the next
10 page, Anchor bolts are installed per schedule, with an
11 AT showing that it was corrected.

12 Q. Okay. Now that I'm with you that far, let's
13 go to the photo column.

14 A. Uh-huh.

15 Q. Are these observation photos, correction
16 photos or -- or what?

17 A. Well, if it's next to an A --

18 Q. Yes.

19 A. -- it's an observation photo to show that
20 condition was acceptable and here's photographic
21 support of it. If it's next to an AT, then it's to
22 show that it was corrected and here's the photographic
23 evidence that it was corrected. So they -- they --
24 looks like they were doing photos with every single
25 one of the sign-offs.

1 A. No. I just believe that you should be able
2 to click on the photo and have it pull up, the blue
3 one with the line under it.

4 Q. If you personally wanted to know what photo
5 is supposed to be at line 8 of page 1 of Plaintiff's
6 Exhibit 350 and it wasn't working, how would you go
7 about finding out which photo relates to that line?

8 A. I would ask somebody to fix my hyperlinks.

9 Q. Who was the IT person at LLC?

10 A. IT person is Ken Ladow.

11 Q. Where is he located?

12 A. In San Diego, California.

13 Q. And his title, please.

14 A. I believe he is the director of IT.

15 Q. And that would be within the Quality Built,
16 LLC offices in San Diego?

17 A. Correct.

18 Q. Just have some random Quality Built-related
19 documents that I would like to go through with you to
20 help understand your system better.

21 A. Sure.

22 Q. Hand you Plaintiff's Exhibit 20.

23 MR. LUCEY: And for the people on the
24 phone, it's the October 22nd, 2006 email from Quality
25 Built to Ron Gambini.

1 Q. (BY MR. LUCEY) It references here a QB
2 Closure Link device. Is that the handheld that we're
3 discussing?

4 A. Yes, sir.

5 Q. And we see that the -- The Gates job -- the
6 reporting on The Gates job is being divided into three
7 different areas?

8 A. Where are you looking?

9 Q. At the bottom?

10 A. At the bottom where it says, Common area
11 garage and living?

12 Q. Yes.

13 A. Correct.

14 Q. And the first line of this email says,
15 Online sign offs now available for builders via QBIN.
16 What is that referencing, please?

17 A. The Quality Built Information Network.

18 Q. Basically they just log in and they can say
19 something's completed?

20 A. They could go through the internet instead
21 of using the Closure Link device, correct.

22 Q. And you've mentioned to me the -- that when
23 they close an item they're supposed to identify who
24 said it had been completed. Do you recall that?

25 A. Yes, sir.

1 Q. And so he would have the capacity to -- to
2 export the closure summary report?

3 A. Yes, sir.

4 Q. What other reports are readily exported from
5 the database besides the -- what I'm going to call the
6 master report, Exhibit 350, the closure summary
7 report, the daily report, and the open-item report?

8 A. Okay. I don't know what you're calling the
9 daily report. Let me explain that nothing is readily
10 available because we've archived this project, and so
11 the reports that existed on the Quality Built
12 Information Network on an ongoing basis for the
13 builders to log in and to -- to view the current
14 status of their jobs, when we archive those go away,
15 and it just becomes the final report and the photo
16 documentations. All of the data is still contained
17 within the database, but it requires the software
18 department to go in and to extract that information
19 once it's archived.

20 Q. Is there a report generator module, software
21 module, that's associate with this database to
22 facilitate exporting data?

23 A. I have no idea.

24 Q. I'm going to show you Plaintiff's Exhibit
25 21. Page 1 appears to be a -- a receipt and then it's

1 Q. And that's not on this database we've marked
2 as Plaintiff's Exhibit 350. Where would -- where
3 would we find that information?

4 A. On a -- there should be a closure summary
5 report that somebody would have. I believe we
6 provided that. And it would tell you who closed out
7 the open items.

8 Q. Is a closure summary report date generated
9 by the same database that generates Plaintiff's
10 Exhibit 350?

11 A. It would be in the same database, correct.

12 Q. You would just need to export a closure
13 summary report?

14 A. Correct.

15 Q. Who exported Plaintiff's Exhibit 350 for
16 plaintiffs in response to our subpoena?

17 A. I believe Garth Michaelis did.

18 Q. And who is that, please?

19 A. He is the director of software.

20 Q. Where is he located?

21 A. Fort Lauderdale.

22 Q. Is he related to you?

23 A. Yes, he is.

24 Q. Husband?

25 A. Yes, sir.

1 followed by two more signature pages. Looking at page
2 1 it appears to be a receipt of superintendent binder.
3 Is that what it is?

4 A. Yes, sir.

5 Q. Did QualityBuilt.com have a superintendent
6 binder?

7 A. Yes, sir.

8 Q. What was in it?

9 A. There was explanations as to what our roles
10 and responsibilities were, what the client's roles and
11 responsibilities were. The -- there would be some
12 dividers for them to keep records if they wanted to
13 keep periodic records outside of the database. There
14 would be instructions on how to use the -- well, at
15 the time, the Closure Link and this particular device
16 that they had selected, and then there would be
17 detailed instructions on how to close out open items.
18 And then there would be information in there on how
19 to -- to request training support, a checkpoint
20 challenge process that we had, how to access training
21 modules that we had available for them. I can't think
22 of anything else at this time.

23 Q. Does your company still have a copy of that?

24 A. Of the superintendents' binders?

25 Q. Yes.

1 A. Oh, I doubt it because Quality Built, LLC
2 doesn't utilize it.

3 Q. Did it utilize it for its first year or two
4 before it developed its own software further?

5 A. We did -- I don't believe we were using
6 superintendents' binders. I think that was one of the
7 things that we did away with immediately.

8 Q. And were copies of this superintendent
9 binder provided to the client, the Dinerstein or DDC?

10 A. Yes, that's what this is -- receipt is for
11 is to show that that binder was delivered and that
12 Milton Grisham went through it on 8/11/06 with
13 whoever's signature this is, Sean's.

14 Q. And was the -- would more than one copy of
15 the binder have been provided?

16 A. Typically, just one. If they ask for a copy
17 of it, and on occasion a builder would, then we would
18 provide a copy of it.

19 Q. We discussed earlier that -- that your
20 company likely did three or four jobs with the
21 Dinersteins. Would there have been three or four
22 copies, one for each job site?

23 A. One for each job site, correct.

24 Q. And was it provided purely in loose leaf
25 form or was there also electronic copy?

1 A. Let's see. At that time they could go onto
2 the Quality Built Information Network and they could
3 get -- they could print out additional copies and
4 forms if they needed it. And that was part of what
5 was explained in the binder is what they could get off
6 of the internet.

7 Q. Is any of that still available on the
8 internet?

9 A. Of the forms?

10 Q. Yes, ma'am. Or the -- or the -- the manual
11 itself.

12 A. I don't think so. I don't think Quality
13 Built, LLC utilized it. I don't think we brought it
14 over because we -- we didn't use that software.

15 Q. Was there a password given to the client to
16 access any -- any of these proprietary manuals?

17 A. Yes, sir. Each user, anybody that had
18 access had their own individual login and password.

19 Q. Do you know of any valid login or password
20 that would still exist for that -- that site?

21 A. I'm -- I'm assuming that every login and
22 password still works.

23 Q. Do you -- do you know any of them?

24 A. I do not.

25 Q. Did you have a password to the site?

1 A. I can get into every site.

2 Q. Did you have a password to the site?

3 A. Yes.

4 Q. Do you still have it?

5 A. Yeah. I have a password to every site.

6 Q. Page 2 of the Exhibit 21 is a signature page
7 from a two-page document. And as far as I know, I
8 don't have the -- the first page of the document. Are
9 you able to tell us what -- what this relates to?

10 A. The second page that says, Closure Training
11 Verification Form?

12 Q. Yes, ma'am.

13 A. Yeah. It means that the inspector trained
14 them on how to use their device and went over our
15 policy for closure and then gave them the three ways
16 that they could get closure into the system and got
17 the signature to show that they understood that that
18 was the process to be followed.

19 Q. And again, both of these -- both of these
20 receipts and -- and verifications are being signed by
21 Sean Gambini on behalf of the client?

22 A. Yes, that does.

23 Q. And then I guess essentially you already
24 described page 3 to us, too, did you not?

25 A. I'm sorry. I'm not following you. Page 3?

1 Q. Closure Training Verification Form. He's
2 simply acknowledging that he's been trained in your
3 system.

4 A. I have two pages.

5 Q. Let me show you my page 3.

6 MR. LUCEY: Mark the record that the
7 official --

8 A. Three is just a repeat of page 2.

9 Q (By MR. LUCEY) Is it?

10 A. Oh, no. It's your page 2 that's different.

11 MR. LUCEY: Mark the record that the
12 official copy of Exhibit 21 needs to be corrected.

13 A. This is instructions on -- I mentioned a
14 checkpoint challenge, so this is training them that if
15 we ever tag them with an anomaly, that they do not
16 agree, as applicable to their project, this gives them
17 the ability to communicate that to us. And we
18 required that builders would give us this support. So
19 they had to tell us the trade that this applied to,
20 what component, what standard, which they could get
21 from the checkpoints themselves, the checkpoint
22 number, and then an explanation of the reason that the
23 checkpoint criteria does not need to be met in the
24 specific situation.

25 So if there was, for example, we wrote

1 them up an anomaly for copper piping and they didn't
2 have copper piping, then that's the reason they would
3 come back. If they came back and they said that
4 standard doesn't apply because the code allows for
5 this exception and we meet that exception, then we
6 would agree. But if we did not agree then we would
7 come back and tell them that the standard still
8 applied and needed to be met on that -- that term, but
9 that's what that is.

10 Q. And who is Milton Grisham?

11 A. He's a Criterium Engineers employee.

12 Q. Do you know his title there?

13 A. I do not.

14 Q. Do you know if he's still there?

15 A. I do not.

16 Q. Do you know if he was out of Maine?

17 A. I do not.

18 Q. Have you ever met him?

19 A. No.

20 Q. Do you know anything about his
21 qualifications?

22 A. I do not.

23 Q. Did QualityBuilt.com have a training manual
24 or a procedures manual which they issued to Criterium?

25 A. Yes, sir, they did.

1 Q. Do you still have a copy of it?

2 A. I do not.

3 Q. Did Quality Built test or in any way review
4 the qualifications of the Criterium field personnel
5 that were working on Quality Built's behalf?

6 A. I don't know if they did or not.

7 Q. Show you Plaintiff's Exhibit 22. That's one
8 of the Quality Built red tags?

9 A. Yes, sir.

10 Q. And I see there's a checkmark. There's a
11 list of items and there's a checkmark apparently near
12 one of them. I'm unable to read the list.

13 Are you able to tell me what that list
14 is?

15 A. It looks like foundation, HVAC, plumbing,
16 electrical -- I can't read the rest.

17 Q. So it's a list of trades and they're
18 supposed to check which one -- the -- the --

19 A. Correct.

20 Q. -- the observation applies to?

21 And 95 will be the observation number
22 that -- of this particular observation?

23 A. Correct.

24 Q. Hand you Plaintiff's Exhibit 23, which is
25 Quality Built field report open items dated

1 December 26, 2006.

2 A. Correct.

3 Q. The QA tag column is the tag number we just
4 saw. For instance on this one, the first one is 27?

5 A. Correct.

6 Q. And the checkpoint number is a number you've
7 assigned to the comments in your checkpoint database?

8 A. Yes. The checkpoints -- the
9 QualityBuilt.com database, I believe, had static
10 checkpoint numbers. So every single time that
11 checkpoint appeared, it would have the same number.

12 Q. And if we look at the first item, Hardie
13 siding, checkpoint number 1202 L, Eighth-inch gap is
14 maintained when butting into wood-base material, that
15 same item is the first item on page 3 on -- and with
16 the same checkpoint number, 1202 L?

17 A. Correct.

18 Q. And what does the L stand for?

19 A. I don't know.

20 Q. And since these observations are listed
21 under the title Minimum Checkpoint Standard Not Met,
22 these are anomalies or violations; is that correct?

23 A. Correct. It means this standard contained
24 within the checkpoint was not met on-site.

25 Q. So on -- in your database, I should be able

1 to find this observation with an AT next to it now?

2 A. Correct.

3 Q. It originally would have been U and would
4 have been converted to AT?

5 A. Correct.

6 Q. And in this particular one, we see a number
7 of cementitious siding comments. Is -- if you'd seen
8 a lot of cementitious siding comments or your company
9 saw a lot of cementitious siding comments or
10 deficiencies, would you have done anything to call
11 that collection of deficiencies to the client's
12 attention besides simply putting it in this report?
13 A. Well, they would get the weekly report and
14 then they would be discussed by the inspector with
15 the -- the designated builder representative at the
16 end of each site visit.

17 Q. So if we see a report like this with a
18 dozen-odd cementitious siding checkpoints that were
19 not met, as a matter of course, your company would
20 have specifically discussed the Hardie Plank siding
21 installation with the site superintendent on his way
22 off the property?

23 MR. NORTON: Object to the --

24 A. That's our standard --

25 MR. NORTON: -- form.

1 THE WITNESS: Oh --

2 MR. NORTON: You can answer.

3 A. That's our standard operating procedure,
4 yes.

5 Q. (BY MR. LUCEY) And that would have been
6 communicated to this third-party inspector through the
7 manual that you had provided his company?

8 A. Correct. And training.

9 Q. Did you all provide training to these
10 third-party inspectors?

11 A. Yes, sir, we did.

12 Q. Tell me about that, please.

13 A. They would just have training sessions. I
14 don't remember if they were monthly or quarterly or --
15 I know after a period of time we signed off on Train
16 the Trainer, which meant that Criterium Engineers had
17 enough people that existed within their own
18 organization that they could take over the training
19 themselves and they no longer needed to send them to
20 our training facility. So I don't know where this
21 gentleman fell within that, who trained them, but that
22 was our -- our process.

23 Q. And where was the training facility?

24 A. Aurora, Colorado.

25 Q. Do you know approximately when you all

1 adopted Train the Trainer -- or make it easier.

2 Was it before or after The Gates job?

3 A. I believe it was before.

4 Q. Do you know who the trainer was in Criterium
5 that you all adopted?

6 A. There was several of them, but I don't
7 recall any of their names.

8 Q. If we look on page -- Bates stamp 8726 in
9 Exhibit 23 for the master bedroom tag number 42, we
10 see that the checkpoint now is followed by an A
11 instead of an L. Do you see that?

12 A. The checkpoint number?

13 Q. Yes.

14 A. Yes, sir.

15 Q. Do you know what the meaning or significance
16 of the A is?

17 A. I -- I don't know.

18 Q. Hand you Plaintiff's Exhibit 24, Draft
19 Quality Built Field Report Open Items dated
20 January 9th, 2007. What is the significance of the
21 label being draft, the title being draft?

22 A. They still have the ability to file a
23 checkpoint challenge if they don't agree with any of
24 those.

25 Q. Does it remain a draft until the project is

1 over and you issue a final report?

2 A. I -- let's see. I don't -- I don't know.

3 Q. If you go to page -- the fourth page of
4 this, Bates stamped 8767, there's some handwriting at
5 the top.

6 A. Okay.

7 Q. Do you know whose handwriting that is?

8 A. No, sir.

9 Q. If you go to the last field report that we
10 looked at, last page, Bates stamped 8737 Plaintiff's
11 Exhibit 23, the last item is item 68, Vapor Barrier.

12 A. Where are you? 8737?

13 Q. 8737.

14 A. Oh, the --

15 Q. Exhibit 23.

16 A. No. 23? Okay. 8737.

17 Q. Last item, QA tag number 68.

18 A. Okay.

19 Q. On December 26th, 2006. It is a vapor
20 barrier on the balcony regarding fastener
21 installation. Do you see that?

22 A. Yes, sir.

23 Q. If we go back up now to the Exhibit 24 from
24 January 9th, 2007, the tag number 68 is the laundry
25 room.

1 A. Are you talking about 8804?

2 Q. I'm talking about -- page Bates stamped
3 8767, QA tag item 68.

4 A. I don't see an 8767.

5 Q. This goes to the front.

6 A. This one has laundry tag 67, but it's 8804.

7 Q. So -- and that one will suffice.

8 A. Oh, here we go, 8767. Okay.

9 Q. Tag 68 is the laundry room. We saw that
10 previously tagged 68 was the vapor barrier. Is your
11 company simply reusing tag numbers every time it goes
12 to the site?

13 A. These are different unit numbers. So that's
14 unit 426. So if you'll recall earlier I said I
15 couldn't remember if QualityBuilt.com's was continuous
16 for the project as a whole, but -- or per unit. This
17 appears that the count is per unit because you would
18 not get the same number. So since this is Unit 127
19 and this is Unit 436 and they have the same tag
20 number, then it must have been tabulating on a
21 per-unit basis.

22 Q. So on a given day when the inspector goes
23 back through, let's just say Unit 311, and -- and
24 makes an observation, his laptop is going to tell him
25 that he's already got 65 tags on Unit 311, so this is

1 tag number 66?

2 A. Correct. It -- it auto generates that tag
3 number.

4 Q. And the tag numbers are associated to a
5 particular unit?

6 A. It appears to be so. It's hard to remember
7 that system.

8 Q. I'm not doubting it. I'm just trying to
9 understand it. And if we go to Bates stamp in Exhibit
10 24, the thicker one --

11 A. Okay.

12 Q. -- about ten pages back, Bates stamp 8845.

13 A. Okay.

14 Q. Tag number 94, Hardie siding one-eighth-inch
15 gap is maintained when butting wood-base material. Do
16 you see that?

17 A. Yes, I do.

18 Q. Okay. So your company is seeing the same
19 deficiency two weeks later that it documented a number
20 of times in Exhibit 23 that we looked at. Do you
21 recall that?

22 A. Yes, sir.

23 Q. And what, if anything, would your company
24 communicate to the client when it sees that the
25 previously documented deficiencies are being repeated?

1 A. Again, we would review it with them. We
2 would offer training. We would offer training
3 materials, whatever they would need in order to
4 support getting the trades to eliminate this anomaly.
5 It was our role and responsibility to report.

6 Q. I'm going to hand you Plaintiff's Exhibit
7 25. And I'll take that one back --

8 A. Okay.

9 Q. -- so it doesn't fall apart since it's not
10 fastened.

11 This open item report appears from
12 December 31st, 2006, appears to be a different format
13 then the prior reports that we've looked at. Can you
14 tell me the difference or the -- what we're looking at
15 now?

16 A. Uh-huh. If you look at Exhibit No. 23 where
17 it has the draft.

18 Q. Yes.

19 A. This is an example of the report that would
20 be generated on the site by the inspector and printed
21 out and handed to the superintendent for correction.
22 This one, No. 25, this is the open-item report that
23 gets generated by the system every single Sunday night
24 and gets emailed to the superintendent and to anyone
25 else in the organization that had the role to receive

1 open items. And it gives not only -- it gives all of
2 the current outstanding open items for the project and
3 the aging of them, and then it sorts it according to
4 the risk factors.

5 So Exhibit 23 would just contain the
6 observations from that single inspection and Exhibit
7 No. 25 would show anything remaining open, regardless
8 of when it was originally observed.

9 Q. And let's go to the open item summary
10 regarding risk factors four and five. It's telling us
11 there's been a total of -- and I'm going to round off.
12 There's been a total of 6,500 observations, and 516 of
13 those resulted in deficiencies; is that correct?

14 A. Correct.

15 Q. Of those 516 deficiencies, 414 have been
16 closed out by the site superintendent and 102 remain
17 to be closed out?

18 A. Correct.

19 Q. Then it sets forth a similar analysis for
20 risk factors one, two and three with 394 original
21 deficiencies, 282 closed out and 112 remaining open;
22 is that correct?

23 A. Correct.

24 Q. And the list following this should list out
25 the remaining 214 items that are still open?

1 A. Correct. And then it shows, you know, the
2 aging of those. So you can see the majority of them
3 were between one and 15 days old, and then 16 of them
4 were 16 to 30 days old and then after that all of them
5 had been closed out.

6 Q. And we see by the end date, December 31st,
7 that your computer didn't even take New Year's Eve
8 off, huh?

9 A. The computer never takes any time off.

10 Q. So if -- if we have a -- a nine-month
11 construction period, we're going to have roughly
12 40-odd of these reports issued every Sunday night
13 total during that --

14 A. Every single Sunday night.

15 Q. And I'm -- let's just take a look at 26. As
16 I understand it, 26, Exhibit 26, would be the same
17 report a week later?

18 A. Yes, sir.

19 Q. And it's showing a -- a dozen or two
20 additional items have been closed out from the last
21 one we looked at?

22 A. Correct.

23 Q. I'm going to hand you Exhibit 27. Is this a
24 similar report as what we saw with Exhibit 23 and 24?

25 A. 24 was also draft, correct. It is the same

1 as 23, yes. This is one that an inspector would print
2 out at the site.

3 (Plaintiff's Exhibit 351 marked.)

4 Q. I'm going to show you Plaintiff's Exhibit
5 351. It's just a random set of the photo log that we
6 grabbed, just ask you questions about it. This
7 appears to be pages 273 through 313 of 1610 pages. Do
8 you see that?

9 A. Yes, sir.

10 Q. And the report time and date is
11 February 20th, 2008, 11:27 a.m. Do you see that?

12 A. Yes, sir.

13 Q. And I take it you're aware this project was
14 substantially done by July of 2007. So this would be
15 a year later?

16 A. I am not aware that, but okay.

17 Q. And so -- so as I understand it, there's
18 1610 pages of photos like this in Exhibit 351 and
19 corresponding data. My -- my question to you is --
20 is what is this? What are these photos?

21 A. This is the final photo report and so this
22 is where I said you can go in and you can download
23 this report at any time and every time you do, that
24 date and -- that report time and date is going to
25 change to whenever it is that you're generating that

1 report, but the information would stay the same. So
2 this is every photograph that was taken.

3 Q. And how does one, sitting here at this table
4 right now, associate one of these photographs with one
5 of the observations we've actually seen in the report?

6 A. Well, QualityBuilt.com just listed the
7 checkpoint numbers and so you could see what the
8 caption would be to the photograph from the checkpoint
9 number off of the spreadsheet. But other than that,
10 you can see the date, the time, that it has to do with
11 framing, wood framing, and truss floor system bracing.
12 And so that tells you what's supposed to be in that
13 photograph.

14 Q. Okay. But how do I relate a given
15 photograph to a specific item in the reports that
16 we've seen?

17 A. The hyperlinks need to work.

18 Q. There's not enough information in Exhibit
19 351 for us to do that manually?

20 A. Oh, yeah, you could do it manually. You can
21 look at the date and the time of the inspection and
22 the unit number and you can look at the checkpoint ID
23 number and you can associate that with a checkpoint
24 that way.

25 Q. Is this report generatable, printable with

1 the tag number?

2 A. With the tag number? No, I don't believe
3 that it has -- well, these would be observations of
4 good quality construction, so there wouldn't be any
5 tag number associated with it.

6 Q. This 1,610 page is all good quality
7 observations?

8 A. It -- there would also be -- I noticed I saw
9 a couple that say start/stop observation. Yeah, so if
10 you look at the second page, page 274, you see a bunch
11 of them that say start/stop consolation [sic] time.
12 So those would be -- you know, part of our metrics for
13 monitoring the inspectors was to make sure that they
14 meet the requirement to be there between three and
15 four hours per unit. And so they were required when
16 they arrived on the site to take a start consultation
17 time photograph, and then when they left, take a stop
18 consolation photo time -- and we made them take a
19 photograph of the project. And so those might be just
20 random photographs of anything on the site.

21 But everything else, like the next one
22 down where it says, Unit 4 landscape irrigation, then
23 that would be a checkpoint that was answered as an A.

24 Q. Okay. So this -- this 1,610 pages of photos
25 is either good quality construction photos or

1 start/stop photos?

2 A. Correct.

3 Q. Is there a --

4 A. Or closure photos. I mean, if they were
5 taking photographs of items that were corrected, then
6 their photographs would be in this database as well.

7 Q. How would --

8 A. And so those would be ATs.

9 Q. How would we tell an AT photo?

10 A. Again, you would have to look at the
11 spreadsheet for the exact date and time and the unit
12 for the photograph and then match up the checkpoint ID
13 number.

14 Q. Well, in this spreadsheet, it -- it only has
15 one date, the inspection date, correct?

16 A. Correct. But that's what would be -- the
17 photographs have to be taken in conjunction with the
18 photograph. You can't upload a library of
19 photographs, for example, and then import them later.
20 You have to collect it at the same time. So there
21 should be, you know, less than a minute between the
22 observation and the photograph being taken.

23 Q. But if it's an AT photo, will the
24 spreadsheet have the inspection date of the original U
25 failure or will it have the inspection date of the AT

1 close out?

2 A. It will have both, but since it's -- we're
3 talking about photographs, we don't take photographs
4 of anomalies. That's the correction. So you would
5 match up the exact date and time of the AT to the
6 photograph.

7 Q. Your company did not photograph anomalies?

8 A. Correct.

9 Q. So if I'm looking for a photograph of an
10 anomaly that got documented by your company, I'm not
11 going to find it?

12 A. We do not document anomalies in photographs;
13 we do in data.

14 Q. So in this 600 -- 1,610 pages of
15 photographs, will I find -- I should find the AT photo
16 for every one of those Hardie Plank conditions that
17 got fixed?

18 A. If they took a photograph.

19 Q. What is the criteria for whether or not they
20 take a photograph with an AT?

21 A. It's entirely up to them and their own
22 internal policies and procedures. So some builders do
23 like to have that additional documentation so they
24 require their superintendents to take a photograph at
25 the time of correction. It appears that this builder

1 A. Correct.

2 Q. And do you see percent complete, 41 percent?

3 A. I do.

4 Q. So this -- this date's from somewhere in the
5 middle of the job; is that correct?

6 A. No. This is at the end because I did
7 generate this in response to people requesting the
8 data, but this is a common area. And so that
9 percentage really doesn't apply because there's no
10 metrics for the completion on the common areas. This
11 is just additional observations that we perform for
12 the client.

13 So we don't measure that on it, but
14 this is the project detail sheet for everybody that
15 had access to the system and the number of checkpoints
16 that we collected on just the common areas.

17 Q. And how do you know that you generated this
18 document, Plaintiff's Exhibit 48?

19 A. Because I remember -- I can't remember who
20 contacted me from the client asking if we had this
21 project explained to them about the bankruptcy and
22 that this was an archived project. And I believe
23 they -- I believe they paid Quality Built, LLC to go
24 in and to regenerate these reports and to send it to
25 them. And I did that because, you know, not a lot of

1 followed that protocol. Others say, nope, we just
2 want you to go in and close them out with the name of
3 the person that verified that it was correct, but no
4 photograph would be required.

5 Q. And the last column of Exhibit 350 where it
6 says Photo, there will only be an AT photo, correction
7 photo, if it's next to an AT line item; is that
8 correct?

9 A. That's correct. So if there's an AT without
10 "photo" next to it, there's no photo for that.

11 MR. NORTON: What number is it?

12 THE WITNESS: Of what?

13 MR. NORTON: Of this spreadsheet?

14 THE WITNESS: I have no idea. Oh,
15 here -- here it is.

16 MR. NORTON: Oh, it's 350?

17 THE WITNESS: 350.

18 Q. (BY MR. LUCEY) Let me ask you to take a
19 look at Plaintiff's Exhibit 48 entitled Project
20 Detail.

21 A. Okay.

22 Q. And it has a print date down at the bottom
23 of April 12, 2013. I'm sure that's probably the date
24 it was produced to us as opposed to -- if we look at
25 last visit. See last visit? It says July 31st, 2007?

1 people at Quality Built, LLC even know how to use
2 these systems.

3 Q. So this report was regenerated in April of
4 2013?

5 A. Yes, sir.

6 Q. And what else was regenerated in April of
7 2013?

8 A. I -- I don't recall. I -- I believe I
9 generated -- if I generated this, I would have
10 generated all of the reports that had been available
11 back then.

12 Q. Do you know how much they spent regenerating
13 reports, roughly?

14 A. I'm -- I'm not positive, but I believe it
15 was somewhere around five to \$750, somewhere in there.

16 Q. And under builder contacts we have various
17 people listed with the user role, and I see Deanna
18 Harms, builder administrator, Chris Kay, builder
19 report viewer, Dale Toelkes, builder report viewer.
20 Would they have been on the Sunday night email list?

21 A. Yes, they would have been.

22 Q. And do you know who Chris Kay is at the
23 Irvine Team?

24 A. I do not.

25 Q. Do you recognize the Irvine Team as having

1 something to do with the insurance policy or the
2 financing?

3 A. No, sir.

4 Q. What about Rudy Esteva [phonetic] and Peruz
5 Borger Geridi [phonetic]; one is at the ABCD Group and
6 one's at Tally Engineering?

7 A. I don't know either of those individuals.

8 Q. So there would be a different one of these
9 project details on a living area and a different one
10 on the garage?

11 A. Correct.

12 Q. And I see down below there's a project
13 contacts chart including Deanna Harms, Hank Wilson.
14 Does that ring -- ring a bell as to any contact you
15 might have had with Hank Wilson on this job?

16 A. Deanna I recall. And matter of fact, she
17 may have been at the original sales meeting and I
18 don't believe I ever had any contact with Hank Wilson
19 or Ron or Tom.

20 Q. And who is Maura McSperrin [phonetic] and
21 what role, if any, did they have in this job?

22 A. Maura was a sales account manager for
23 Quality Built. And typically what I did is, if I
24 delivered the original sales call and the client moved
25 forward, I would turn them over to a sales account

1 A. Well, I can see that they were listed, but
2 it doesn't refresh my memory. I don't recall them.

3 Q. Do you know what Charra refers to?

4 A. I do not.

5 Q. Hand you Plaintiff's Exhibit 205.

6 A. Okay.

7 Q. Do you recognize this plan review that's
8 attached to it?

9 A. I recognize it as one of our plan reviews,
10 yes.

11 Q. Have you seen The Gates plan review in the
12 last several years?

13 A. No, sir. I don't know that I've ever really
14 seen it.

15 Q. It has a number of comments, a number of
16 columns. Are these all columns generated by your
17 company being sent to DDC or is one of these columns
18 their comments coming back?

19 A. These are all of our -- at least, I'm -- I'm
20 only looking right now at page 1 of 17, but these are
21 all our comments.

22 Q. And what would you expect their reply to
23 have looked like?

24 A. I believe that QualityBuilt.com provided
25 them with a form. It -- basically an Excel

1 manager and an account coordinator to handle that
2 client going forward.

3 Q. I'm going to hand you Plaintiff's Exhibit
4 15, a email chain ending April 12th, 2007 from Jack
5 Dinerstein to Deanna Harms. If we go to page 2 we can
6 go in chronological order on these emails.

7 A. Okay. Okay.

8 Q. It appears from this email that -- this
9 series of emails that on April 12th, 2007, DDC
10 achieved closure on all open items on all jobs.

11 A. I do see where they type that.

12 Q. Were you aware of that when it occurred?

13 A. No.

14 Q. Is that unusual?

15 A. No. I mean, 2007, wasn't this substantially
16 complete?

17 Q. April 12th, 2007?

18 A. Uh-huh.

19 Q. And the second-from-last email refers to
20 the -- all the jobs including Shop Road, Charra
21 [phonetic], North Ocean and Los Angeles. Do you see
22 that?

23 A. I do.

24 Q. Does that refresh your memory as to which
25 jobs y'all had open in that -- at that time?

1 spreadsheet where they had a column that was added and
2 they could put their comments there and they could
3 also put attachments with it if they needed to send
4 back attachments.

5 Q. The plan --

6 A. Or the -- excuse me. Or they could
7 submit -- I see there's a number of things here that
8 are checked as not provided. It could be that the
9 plan review was done before the plans were totally
10 complete. And another way that they could get these
11 closed out is just send us the updated [inaudible] of
12 the plans and we would check anything that was not
13 provided in the new plans.

14 Q. And would your company have generated a
15 document when it checked the plans against its
16 comments?

17 A. Yes. There would be updates where things
18 that were not provided would be moved over to the
19 provided category.

20 Q. The reviewer is listed as David Finney. Do
21 you know who that is?

22 A. Name is familiar, yes. There was a
23 gentleman in the San Diego office.

24 Q. Is he still with your company?

25 A. No, sir.

1 Q. What involvement in The Gates do you
2 actually recall as being personally involved in
3 besides what I think we've covered so far, which is
4 the original marketing meeting in Houston and then
5 negotiating the contract and the regeneration of the
6 reports in 2013?

7 A. Other than that, I really didn't have any
8 interaction with these projects or the -- the client.

9 Q. If I were to review the -- the plan review
10 with you, would your professional knowledge allow you
11 to comment on the items that were listed --

12 A. No, sir.

13 Q. And you wouldn't know whether or not they
14 were implemented or not, correct?

15 A. No, sir.

16 (Plaintiff's Exhibit 352 marked.)

17 Q. I'm going to show you Plaintiff's Exhibit
18 352.

19 MR. NORTON: You gave me two copies.
20 Did you need one? Too kind.

21 A. Okay.

22 Q. (BY MR. LUCEY) This is obviously a series
23 of emails regarding problems with the windows --
24 window checkpoints coming up at inconvenient times and
25 for reasons that's explained in the exhibit.

1 Do you know what the ultimate outcome
2 of this request was or this problem was?

3 A. Obviously, they were closed out if there are
4 no open items at the end. The reason that they're
5 bringing that to our attention is because -- well,
6 first of all, they -- they were not going to close it
7 out until it was corrected and they're clearly
8 communicating that. But they are concerned that -- as
9 I said, any open items that reached a certain aging
10 would automatically be forwarded to the insurance
11 carrier, and they knew this, and they wanted to give
12 an explanation as to why these particular items were
13 going to exceed the insurance carrier's compliance
14 standards.

15 And so we notified the insurance
16 carrier and let them know these particular checkpoints
17 would go beyond, and so they would get the
18 notifications because we're not going to close it out,
19 they're not going to close it out, but that they
20 weren't being ignored or covered up, they were just
21 going to be corrected at a specific time.

22 Q. So I should see ATs next to the window
23 checkpoints that relate to this?

24 A. Correct.

25 Q. Do you know who Richard Cassens [phonetic]

1 is?

2 A. Yes, sir.

3 Q. Who is he?

4 A. He was a QualityBuilt.com employee.

5 Q. And what -- what was his function?

6 A. I believe he had various functions. They
7 were all technical. He was an inspector at one point.
8 He was a trainer at one point. He may have been an
9 area manager at one point.

10 Q. Do you know if he had any role relating to
11 The Gates job?

12 A. I do not.

13 Q. Has your new company performed any jobs
14 directly or indirectly for either Dinerstein or any
15 Dinerstein affiliate?

16 A. I do not believe so.

17 Q. When is the last time that you know that you
18 or your company had contact with the Dinerstein
19 Companies, the affiliates, the Dinersteins, their
20 employees, regarding anything except scheduling or
21 preparing for this deposition?

22 A. When they called me and asked me to generate
23 the reports.

24 Q. And prior to that?

25 A. I don't recall. It had been several years.

1 Q. Several years would -- would still be
2 post-bankruptcy sale, correct?

3 A. I don't believe so. I -- I don't recall
4 having any contact with them at all after the
5 completion of the jobs. I -- personally, I don't
6 recall having any contact with them at all after I
7 turned the accounts over to sales account managers.

8 Q. And is Lexington still a client of yours?

9 A. The -- the insurance carriers are not
10 considered clients because they don't sign contracts
11 directly with us. But yes, that is an insurance
12 carrier that recognizes Quality Built as an approved
13 QA provider.

14 Q. What did you do to prepare for today's
15 deposition, please?

16 A. Almost nothing.

17 Q. Did you review any documents?

18 A. No, sir.

19 Q. Did you meet with anyone to discuss the
20 case?

21 A. Yes, sir.

22 Q. Who did you meet with?

23 A. I met with these two gentlemen last night
24 for dinner.

25 Q. The two attorneys sitting next to you?

1 A. Yes, sir.

2 Q. Are they representing you or your company in
3 any way in this deposition?

4 A. I don't believe so.

5 THE WITNESS: You're not going to bill
6 me, are you?

7 Q. (BY MR. LUCEY) What did you all discuss
8 over dinner?

9 A. They just wanted -- I want to explain to
10 them again that I am not a construction expert and
11 that I cannot opine on any of the alleged deficiencies
12 with the project. And they wanted to reassure me that
13 I was being brought here only in the capacity to help
14 understand the reports, that it was understood that my
15 role is related to contracts, and that it would be
16 limited to that. So that was about it.

17 Q. Have you seen a Gates contract?

18 A. I have not. Everybody's asking me for the
19 contract. But when you say I've seen it, I saw it,
20 obviously, when it was generated. I probably saw it
21 when it came back signed and put into the file, but I
22 haven't seen it since.

23 Q. And it's not jumping out at me, but there's
24 a document that reflects the job costs, including any
25 pre-inspection work, was approximately \$100,000. Does

1 superintendent with Dinerstein or DMC.

2 A. No, I wouldn't have had any interaction with
3 him.

4 Q. Curtis Burnett?

5 A. No, sir.

6 MR. LUCEY: We can take a
7 several-minute break and I'm going to see if I can
8 find that invoice, the \$100,000 invoice I just
9 referenced.

10 THE WITNESS: Okay.

11 (Break from 3:34 p.m. to 3:41 p.m.)

12 (Plaintiff's Exhibit 353 marked.)

13 Q. (BY MR. LUCEY) I've put in front of you
14 Exhibit 353, and if we look at page 1, this is a
15 document generated by QualityBuilt.com, correct?

16 A. Correct.

17 Q. And this shows the contract amounts and then
18 the amounts that have actually been billed or paid,
19 right?

20 A. Correct.

21 Q. So the contract amount on this job was
22 \$100,000?

23 A. Correct.

24 Q. And it does show a -- a charge for the QB
25 Link Pocket PC, correct?

1 that sound roughly correct?

2 A. At that time, our average cost was \$550 a
3 unit.

4 Q. And would there have been a -- there would
5 have been a separate charge for the garage?

6 A. No. The -- we charged off of the living
7 units, but there was time allocated for the common
8 areas of the garage and such. I mean, there's a --
9 there's a chance there would have been an extra charge
10 for the garage, but it wasn't our standard operating
11 procedure. If there was a charge, it meant that they
12 wanted us to spend more time looking at the garage
13 than we would have included in the living fee.

14 Q. I'd asked you some names earlier regarding
15 some of the early contacts involved. Let me just
16 throw a couple more out to you.

17 Carl Hussman?

18 A. No, sir.

19 Q. Ron Gambini?

20 A. Well, now that I've seen his name on some
21 few documents, but other than that, I don't recall
22 that gentleman.

23 Q. Mike Pearson?

24 A. Who's Mike Pearson with?

25 Q. At the time, he was an assistant site

1 A. Correct.

2 Q. And it also shows a charge for the QB
3 Closure Link 2.0 Software, correct?

4 A. Correct.

5 Q. The QB Closure Link is 4,000 and the pocket
6 PC is 675, correct?

7 A. Correct.

8 Q. Is -- is the Closure Link on the desktop or
9 the laptop and the -- the pocket PC is -- is the
10 little handheld?

11 A. No. The software is the charge for the
12 software on a per-unit basis. The pocket PC is the
13 actual hardware device, so that would have been a PDA
14 device.

15 Q. Okay. And did that PDA device take a
16 photograph?

17 A. I don't know. It's some kind of
18 Hewlett-Packard, but I don't know if that particular
19 model allowed for a photograph or not.

20 Q. And that QB Link Pocket Device is the
21 close-out device for the client?

22 A. Correct.

23 Q. And I see attached to here for the period
24 ending August 31st, 2006, the field rep on all visits
25 so far has been Milton Grisham?

1 A. Correct.
 2 Q. Are you aware of any other field rep that
 3 ever worked this job?
 4 A. No. I don't know if there was or was not.
 5 Q. And then I want to show you a couple of the
 6 photographs that your company has produced. I'm going
 7 to come around; if that's okay with you.
 8 A. Sure.
 9 Q. Here's the first observation photograph just
 10 the way it came in the database for all I know, but --
 11 and it's -- the photograph file is titled
 12 "FFFE868-49F2-4C5C-87DD-DFB103A563FF. Do you see
 13 that?
 14 A. I do.
 15 Q. Is -- is there a -- some sort of a
 16 nomenclature that relates that file name to an
 17 observation?
 18 A. I don't know.
 19 Q. Do you see any identifiers in that file name
 20 that indicate to you it relates to something else?
 21 A. No. I'm sure all that means something to
 22 somebody, but it doesn't mean anything to me.
 23 Q. Have you ever heard of an entity called
 24 Highway One Construction?
 25 A. No, sir.

1 Q. When you did your marketing in the
 2 Dinerstein offices before The Gates job, did you
 3 disclose to Dinerstein Companies that your company
 4 would be using independent contractors to carry out
 5 the job?
 6 A. Yes, sir. We always disclosed that.
 7 Q. And would you also have disclosed to them
 8 the name of the entity that was going to be utilized
 9 for these inspections?
 10 A. Yes, sir.
 11 Q. So they would have known from day one of
 12 Criterium's involvement in this case?
 13 A. Correct.
 14 Q. And is that also so for Lexington?
 15 A. Yes, absolutely.
 16 Q. And can you tell me who you believe would be
 17 the most knowledgeable person, the most
 18 knowledgeable -- or ex-employee of QualityBuilt.com
 19 relating to The Gates job?
 20 A. I wouldn't know who that would be.
 21 Q. Can you tell me who you believe the most
 22 knowledgeable person at Criterium would be relating to
 23 The Gates job?
 24 A. Well, apparently Milton would be because his
 25 name is on everything and was out there continuously,

1 but other than him, I -- I don't know if Alan Mooney
 2 would know something or not.
 3 Q. If who would?
 4 A. Alan Mooney.
 5 Q. Alan Mooney. Is that who you negotiated the
 6 Criterium contract with?
 7 A. Correct.
 8 Q. Thank you, ma'am. That's all I have.
 9 I'm going to make a follow-up request
 10 for some of the information that's in the database
 11 that we've been unable to get so far. I'm happy to
 12 pay the cost of having it exported from the database,
 13 such as the -- who was the trade that authorized a
 14 particular item to get closed out, information such as
 15 that. Who should I direct that request to?
 16 A. You can direct it to me, but, you know, I'll
 17 have to get authorization to do that.
 18 Q. From?
 19 A. From the client, for one thing, because of
 20 the -- the clause in our contract; and second of all,
 21 from -- from Quality Built, LLC because it's their
 22 information that they purchased.
 23 Q. You did receive a subpoena from our office
 24 regarding any documents or evidence or ESI relating to
 25 The Gates at Williams-Brice, did you not?

1 A. That was readily available, yes. And it
 2 sounds to me like what you're requesting are things
 3 that are not readily available that we would have to
 4 go in and generate.
 5 Q. They're in the same database as Plaintiff's
 6 Exhibit -- that Plaintiff's Exhibit 350 was generated
 7 from, correct?
 8 A. Correct.
 9 Q. It just wasn't exported with that data.
 10 A. It probably wasn't requested, so yes.
 11 Q. Just so we're clear, we -- we did request
 12 all data or evidence relating to The Gates, so we
 13 would work with you on getting that reproduced and
 14 would be happy to pay for the IT expense to have it
 15 done.
 16 A. Okay. Well, you know, attorneys work it out
 17 and tell us what you want.
 18 MR. LUCEY: Okay. Thank you.
 19 EXAMINATION
 20 BY MR. NORTON:
 21 Q. Got just a couple of questions. Wanted to
 22 ask some follow up. I'm referring back to Exhibit 352
 23 that you have in front of you here.
 24 A. Yes, sir.
 25 Q. If you look on the second page, that email

1 string, it talks about avoiding premature inspecting
2 of items. Do you see that?

3 A. I do see that.

4 Q. Remember talking about it?

5 Did -- is it possible that some
6 anomalies that were noted, some unacceptable items,
7 were because those things were in process or simply
8 incomplete at the time rather than being some sort of
9 improper construction technique or defect?

10 A. Yes, sir. Again, the protocol was random
11 and continuous inspections. And so we would show up
12 on a time-driven basis more so than at milestone
13 inspections. And so yes, it is conceivable that if
14 our inspector was there before a system was completely
15 installed that they would have tagged something just
16 to make people aware of it, but it wouldn't have been
17 a true defect.

18 Q. Ask you to look at Exhibit 350, which is the
19 spreadsheet, if you have it. You're welcome to use
20 mine if you don't.

21 A. Okay. I have it.

22 Q. And I'll ask you to look, for example, on
23 page 3 of that spreadsheet. Looks like about halfway
24 down there's a series of items with an AT beside it.

25 A. Yes, sir.

1 Q. And each of those have a photo associated
2 with it; is that right?

3 A. Yes, sir.

4 Q. Those photos would have been uploaded by --
5 by DDC Construction?

6 A. Yes, sir.

7 Q. And as you look down on this spreadsheet, if
8 you'll take just a second and look through, can you
9 find any of those corrected items that don't have a --
10 have photos associated with them?

11 A. No, sir. They all have a photo associated
12 with them.

13 Q. And was there anybody at your company --
14 well, at the time your company, which we'll -- we've
15 referred to as QualityBuilt.com that would have
16 reviewed those uploaded photos?

17 A. I do not recall if QualityBuilt.com would
18 have reviewed those or not.

19 Q. One of the technical people would have
20 looked at it, if anyone?

21 A. Yes. There was -- there was a protocol of
22 walk behinds on the inspectors and it involved a photo
23 and data review. And so since this was a Criterium
24 employee, then Criterium would have been responsible
25 for performing that function, but they should have had

1 one of their engineers spot check their work and look
2 at the photographs. And there was the ability to
3 change the photographs from -- from unreviewed to
4 reviewed and -- and you could even reject a photograph
5 if you didn't think that it was a good quality
6 photograph, and they should have done that on some
7 spot checks.

8 Q. So for each -- for -- they should have spot
9 checked behind to make sure that the photos uploaded
10 in fact were showing closed-out items, is that what
11 I'm understanding?

12 A. They would have -- and that's the part I'm
13 unclear on because I don't know what the protocol
14 would have been. I don't know if that photo and data
15 review would have involved photographs uploaded by the
16 client or just for their inspector. But the things
17 that they were looking at is they would look at the
18 photographs to make sure that they were good quality
19 photographs, they weren't fuzzy or too dark to see
20 what it was.

21 They were to make sure that the
22 photograph was a representative of the caption, the
23 checkpoint. And then they were to check the dates and
24 the times and those things and to make sure that they
25 were getting a good sampling of the photograph, but I

1 don't know if it included the client's photographs or
2 not.

3 Q. And so describe the walk behind process for
4 me, then.

5 A. The walk behind process would be that, you
6 know, periodically you would send somebody to the site
7 to walk to make sure that any anomalies that they
8 observed were also being reported by the inspector.

9 Q. So this is a -- sort of a second set of eyes
10 with Criterium, is that --

11 A. Correct. It's checks and balances to make
12 sure that the inspector is recording all of the
13 observed anomalies in writing and that they aren't
14 missing any.

15 Q. Okay. Does -- did QualityBuilt.com have any
16 particular certifications from any outside agencies or
17 trade groups?

18 A. Well, there was no published standards for
19 what third-party QA inspectors should have, other than
20 in the state of California there was an SV800
21 requirement. And an SV800, it actually defines what
22 you have to be to be a -- a approved third-party QA.
23 And that involved, at the time -- I believe in 2006 it
24 was the ICPO certification of a building inspector.

25 You had to have a minimum of five years

1 experience as -- in construction in a position that
2 made you familiar with the sequencing of products and
3 the integration of products and systems and then -- or
4 as an alternative to the ICPO certification you could
5 be a licensed contractor or you could be a licensed
6 architect or an engineer. And then Quality Built, on
7 top of that, required that you also get certification
8 from us on -- on their training.

9 Q. Was -- I think I saw somewhere else in the
10 documents that it was -- that QualityBuilt.com was the
11 only ISO certified quality assurance program or
12 something to that effect?

13 A. Correct.

14 Q. If I remember that correctly.

15 What did you have to do to be ISO
16 certified? What did QualityBuilt.com have to do to be
17 ISO certified, I should say?

18 A. An ISO certification was one of the most
19 rigorous and painful things that I've ever gone
20 through in my life because it actually involves
21 creating a written work instruction for literally
22 everything that you do in your organization, and to
23 create forms that tie to those and to have a system so
24 that you can track the revisions and you can verify
25 that people are utilizing the correct revisions of the

1 documents and that you're getting the records back to
2 support both continue process improvement and also
3 client satisfaction.

4 And it took us probably close to 18
5 months utilizing a consultant just to get the bones in
6 place. And then you have to go at a minimum of one
7 year operating on that system and creating your
8 records and then you have to pay a independent third
9 party, you know, ISO certified company to come in and
10 audit to make sure that you do have the written work
11 instructions, that you're following them, that you are
12 creating the records. And then we paid them extra to
13 help us, you know, create suggestions to improve our
14 system.

15 And then at that point, we became ISO
16 certified. You have to then have that certification
17 for a number of years annually where they do a full
18 system audit and then after you've had that status for
19 a certain number of years, then they allow you to have
20 an abbreviated system audit annually and then a full
21 system audit every three years.

22 Q. QualityBuilt.com had these certifications in
23 place at the time that The Gates was being constructed
24 in 2006?

25 A. Correct.

1 Q. You mentioned that QualityBuilt.com worked
2 on an audit basis. Can you describe what you mean by
3 that, please?

4 A. It means that we do not -- again, it's a
5 time driven basis, so we come to the site and we
6 inspect whatever is open and continuous. We are not a
7 quality control program. So we're not there to
8 inspect every single aspect of the construction of the
9 building. We're only there a very limited time of
10 three to four hours per unit, and we audit to make
11 sure that the internal QA program that's in place is
12 working.

13 They're doing what they're supposed to
14 do. They're conducting their own inspections. They
15 are signing off on any open items that we do and that
16 they're progressing in the training and communication,
17 but we do not represent that we're going to see all of
18 the same checkpoints in every single unit for the --
19 the project as a whole, so we're auditing the program.

20 Q. And your reports that you generate, the
21 owner, developer, general contractor are entitled to
22 rely on those reports in accordance with their terms?

23 A. Absolutely.

24 MR. NORTON: I don't have anything else
25 right now. Do you want to ask anything, Josh?

1 MR. BENNETT: Sure.

2 EXAMINATION

3 BY MR. BENNETT:

4 Q. Hey, Ms. Michaelis. We met earlier today,
5 but again, my name is Josh Bennett, and I represent a
6 company called HCM Utah. I just have a few quick
7 questions for you.

8 You actually never visited The Gates
9 project; is that correct?

10 A. That's correct.

11 Q. Do you have any knowledge related to what
12 stucco products were use at the project?

13 A. No. I know nothing about construction, and
14 so I -- I couldn't even recognize it if you told me
15 what it was.

16 Q. So you have no opinions or criticisms as to
17 the stucco products?

18 A. I could tell you if it was pretty or not and
19 that's about it.

20 Q. Okay. Would Quality Built have any records
21 related to what stucco products were used?

22 A. QualityBuilt.com may have collected
23 information on that because it wouldn't be unusual for
24 us to request it, particularly during the technical
25 plan review, but Quality Built, LLC did not bring

1 those files over at the time of the bankruptcy and
2 asset sale.

3 Q. So these are not in existence, as far as you
4 know?

5 A. As far as I know, that's correct.

6 Q. Would Quality Built have inspected the
7 stucco or the stucco installation during construction?

8 A. They would have audited it, yes. It was
9 part of the exterior cladding, so they would have
10 performed some inspections on the stucco system.

11 Q. But you don't have any personal knowledge as
12 to such inspections on this project?

13 A. That's correct.

14 Q. If those inspections did occur, would any
15 observations noted by the Quality Built inspectors be
16 included on that spreadsheet we were looking at
17 earlier in your deposition?

18 A. Yes, sir.

19 Q. Do you know if the Quality Built inspectors
20 would ever check to see if the project was being
21 constructed in conformance with any applicable
22 manufacturer's installation instructions?

23 A. Many of the basis of our checkpoints comes
24 from manufacturer specifications. So -- and that's
25 part of what they could drill down to. So for

1 example -- and again, you know, my examples might be
2 dumb, but I only know a few. Weatherization barrier,
3 if you utilized a Tyvek system, then you could select
4 Tyvek and the -- the checkpoints would be specific to
5 Tyvek. If you used building paper you could select
6 building paper and it would be specific to building
7 paper. But I don't know, in 2006, how many exterior,
8 you know, stucco systems, one-coat or three-coat
9 systems, were that specific in the system.

10 Q. So were the checkpoints specific to a
11 manufacturer?

12 A. If they had that part in the database at
13 that time, then yes, you could have gotten down to the
14 manufacturer specifications, but if not then it would
15 have been generic to all one-coat or all one --
16 three-coat stucco systems.

17 MR. BENNETT: Okay. I think that's all
18 I have.

19 MR. LUCEY: Anybody on the phone have
20 questions for the witness?

21 MR. GAMBRELL: This is Brian Gambrell.
22 I don't have any questions.

23 MR. ELLIOT: Glenn Elliot, no
24 questions.

25 MR. LANG: Dale Lang, no questions.

1 MR. ELLIOT: James Elliot, no
2 questions.

3 EXAMINATION

4 BY MR. ADAMS:

5 Q. This is Chris Adams. I've got just one or
6 two quick questions. I represent HGE Consulting who
7 was the MEP designer on the project.

8 I just want to clarify one thing. Did
9 I understand you to say that it was Quality Built's
10 normal practice that they did not look at the MEP
11 plans or designs during the plan review process?

12 A. That's correct.

13 MR. ADAMS: Okay. That's all I had.
14 Thank you.

15 MR. LUCEY: That's it on the phone?

16 MR. WINTON: Justin, this is Tyler. I
17 have a couple quick questions, if you can hear me.

18 MR. LUCEY: Yes.

19 EXAMINATION

20 BY MR. WINTON:

21 Q. Ma'am, my name is Tyler Winton. I represent
22 the architects in this case, Clerkly Watkins Group.
23 Can you hear me okay?

24 A. Yes, sir.

25 Q. Okay. Are you familiar with my client?

1 A. No, sir.

2 Q. Okay. You didn't have any involvement or
3 communications with any representative of Clerkly
4 Watkins Group during this project, did you, ma'am?

5 A. That's correct.

6 Q. Okay. And I just have a couple other final
7 questions.

8 When I was looking at some of the draft
9 reports, I noted at the bottom a reference to a QB
10 Closure Link device or a Quality Built build
11 administrator. And it noted that the Quality Built
12 administrator can sign off on items via the Quality
13 Built Information Network.

14 A. Correct.

15 Q. Are those terms that you're familiar with?

16 A. Yes, sir.

17 Q. Okay. And I apologize if you and Justin
18 discussed this earlier. I had a difficulty hearing.
19 However, do you know who was the Quality Built
20 administrator in this case and who had the ability to
21 sign off on particular aspects?

22 A. There was an exhibit which had project
23 details for only the -- let me see if I can find it.
24 It was just for the common area, but it's Exhibit 48.

25 Q. Thank you.

1 A. And so this is for the common areas, but
2 there would have been a project detail report for the
3 living units as well. Most likely it's the same
4 people, but you see that anybody who was on this for
5 Closure Link, so Ron Gambini, he had the ability to
6 sign off items.

7 Q. Okay.

8 A. And let's see if anybody else did, too. And
9 it may be that if you had the administrator you could
10 go in through the internet, so that would have given
11 Diana the ability to do that, Rudy, and I can't
12 believe that my pronunciation of that other name would
13 be any better than yours, so I'm just going to say --

14 Q. Understood.

15 A. -- the last one under builder contacts.

16 Q. Okay. And it would be limited to those
17 individuals that would have the ability to approve
18 particular items; is that correct?

19 MR. LUCEY: Objection.

20 Q. (BY MR. WINTON) Is that your understanding?

21 A. That's my understanding, yes.

22 MR. WINTON: Okay. Great. Thank you,
23 I don't have any further questions for you. I
24 appreciate your time today.

25 FURTHER EXAMINATION

1 BY MR. LUCEY:

2 Q. Sean Gambini who had signed those training
3 certificates on how to sign off on items would have
4 also been able to sign off and close out items, right?

5 A. Correct. Now, on the other project detail,
6 he may have been listed on those living units as well
7 or he could have been added at another time and taken
8 off. I mean, people get on and off the bus.

9 Q. I'm just going to ask you a couple follow-up
10 questions on the database -- the Excel spreadsheet
11 that Exhibit 350 was extracted from.

12 A. Okay.

13 Q. I've now sorted this database in that column
14 there with your As and your ATs.

15 A. Okay.

16 Q. And just to confirm, you're still looking at
17 this -- let's -- let's go here.

18 If we go down to the bottom we'll see
19 that we're still dealing with the same 37,000-odd
20 entries that we began with. You see that, we're down
21 here at 37663?

22 A. Yes.

23 Q. Okay. So when we sort by the coding, A
24 versus AT versus U --

25 A. Uh-huh.

1 Q. -- we'll see that AT starts at 32532, in
2 other words 32,532. See that transition at --

3 A. I do.

4 Q. Okay. And if we look at the ATs as a group,
5 we see that actually, as a group, very few of them
6 have photos next to them, correct?

7 MR. NORTON: Object to the form.

8 Q. (BY MR. LUCEY) Do you see that the --

9 A. I do I see that there's some without
10 photographs.

11 Q. The minority of them have photographs,
12 correct?

13 MR. NORTON: Object to the form.

14 A. I -- I don't know if it's a minority or not.
15 I see that some do and some don't.

16 Q. (BY MR. LUCEY) Okay. And it's -- and just
17 to confirm our earlier testimony, any of those that
18 have a photograph, that would be the corrected
19 condition, not the original condition, correct?

20 A. That's correct.

21 Q. And if we finish out -- if we go to the
22 bottom of the ATs, we'll find that they end at line
23 35,074. Correct?

24 A. Correct.

25 Q. Which means there's roughly 2,500 AT lines

1 that -- between those two numbers, correct?

2 A. Okay. I need a calculator.

3 Q. And then if we go to the Us, they start at
4 the next line, which is 35075 and the Us go down to
5 37641, correct?

6 A. Okay.

7 Q. So we have roughly 2500 entries on .com's
8 database that remain unacceptable, correct?

9 MR. NORTON: Object to the form.

10 A. I -- I don't know. I mean, we'd have to
11 look at it. I mean, I don't understand what you're
12 saying. There's 25 ATs and 2500 Us roughly, correct?

13 Q. Right.

14 A. Okay.

15 Q. The ATs went from 32,5 to 35,000 and the Us
16 went from 35,000 to 37641.

17 A. Well, the Us are the original answers, then
18 they get changed to AT, but we provided you with both
19 the original answer and the follow-up answer.

20 Q. So you're saying every one of those Us
21 should also have an AT line?

22 A. Correct.

23 Q. Okay. And the comment will be identical?

24 A. Correct. The tag number, everything will be
25 identical, just the date and time and it changes from

1 one answer to another.

2 Q. And would the Us still -- so -- okay. So
3 the U will have a new date on it; is that correct?

4 A. Correct. The Us will have been signed off
5 to an AT. So you should be able to find a
6 corresponding AT to every U.

7 Q. Okay. So in this database, none of the Us
8 are changed to ATs, they're simply done twice?

9 A. Correct. They're the original answer.

10 Q. Okay. And as -- as I understand it, you
11 have no personal knowledge that any walk behinds ever
12 actually occurred at The Gates; is that correct?

13 A. That's correct.

14 Q. And you wouldn't be able to tell us who did
15 them either, correct?

16 A. No, sir, I would not.

17 Q. And as I further understand it, your
18 company's role at this job was to identify problem
19 conditions, not to confirm corrections; is that
20 correct?

21 A. That's correct.

22 MR. NORTON: Object to the form.

23 A. QualityBuilt.com's primary responsibility
24 was to show substantial compliance with the plans,
25 codes and specifications and to point out any observed

1 anomaly. But we were just to report at the end of the
2 day. We were not to follow up on the corrected items.
3 That was the responsibility of the contractor.

4 Q. (BY MR. LUCEY) Okay. So Quality Built
5 actually itself didn't know and doesn't know today
6 whether or not any of the conditions it identified as
7 unacceptable were, in fact, ever corrected?

8 MR. NORTON: Object to the form.

9 A. Just from the data. We have the
10 documentation that it was closed out, but we did not
11 walk behind and observe it ourselves.

12 Q. (BY MR. LUCEY) The site superintendent says
13 it was closed out, but you all don't know one way or
14 the other?

15 MR. NORTON: Object to the form.

16 A. That's correct.

17 MR. LUCEY: Okay. Thank you, ma'am.

18 Anybody else on the phone? Any follow
19 up? Going once. Going twice. Deposition's over.
20 We'll see you tomorrow at 9:00 a.m. Central, which is,
21 I believe, 10:00 a.m. Eastern.

22 (Deposition concluded at 4:12 p.m.)
23
24
25

1 REPORTER'S CERTIFICATE

2
3 I, SAMANTHA FALCONE, Certified Shorthand Reporter
4 in and for the State of Texas, do hereby certify that,
5 pursuant to the agreement hereinabove set forth, there
6 came before me on the 5th day of August, 2014, at the
7 Hyatt Regency DFW, located at 2334 International
8 Parkway, Dallas, Texas, the following named person,
9 to-wit:

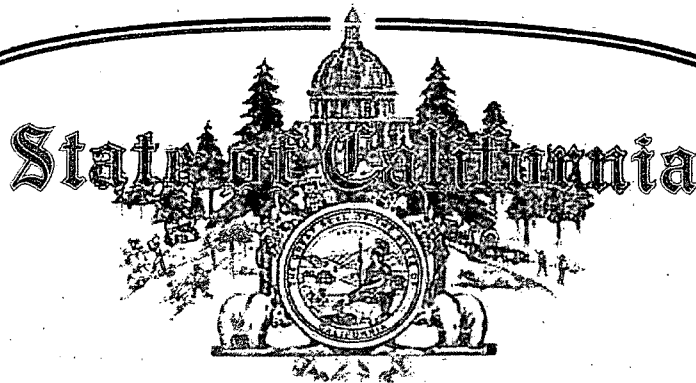
10 BETH MICHAELIS, who was by me duly sworn to tell
11 the truth, the whole truth, and nothing but the truth
12 of their knowledge touching and concerning the matters
13 in controversy in this cause; and that the witness was
14 thereupon carefully examined upon their oath and their
15 examination reduced to writing under my supervision;
16 that the deposition is a true record of the testimony
17 given by the witness. The witness did not request to
18 review and sign the original transcript.

19 I further certify that I am neither attorney or
20 counsel for, nor related to or employed by, any of the
21 parties to the action in which this deposition is
22 taken, and further that I am not a relative or
23 employee of any attorney nor counsel employed by the
24 parties hereto, or financially interested in the
25 action.

1 Certified to by me, this ____ day of
2 _____, 2014.
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6 SAMANTHA FALCONE, Texas CSR 9091
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2045531



SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUL 12 1998

Bill Jones

Secretary of State

ARTICLES OF INCORPORATION

2045531

OF

QualityBuilt.com

**ENDORSED
FILED**

In the office of the Secretary of State
of the State of California

JUL 12 1999

I

The name of this corporation is QualityBuilt.com

BILL JONES, Secretary of State

II

The purpose of this corporation is to engage in any lawful act or activity of which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process:

Carl M. Longley, Jr.
Attorney at Law
7848 Ivanhoe Avenue
La Jolla, California 92037-4501

IV

This corporation is authorized to issue only one class of shares of stock, and the total number of shares which this corporation is authorized to issue is one million.

V

The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

VI

This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code.

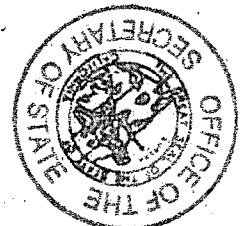
DATED: July 12, 1999

Carl M. Longley, Jr.

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

DATED: July 12, 1999

Carl M. Longley, Jr.



ROA_00751

Delaware

PAGE 1

The First State

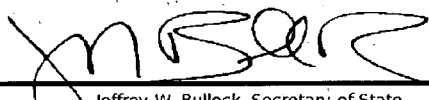
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "QUALITY BUILT, LLC", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF JULY, A.D. 2009, AT 6:06 O'CLOCK P.M.

4711555 8100

090727297

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7439379

DATE: 07-27-09

ROA_00752

CERTIFICATE OF FORMATION

OF

QUALITY BUILT, LLC

The undersigned, an authorized natural person, for the purpose of forming a limited liability company, under the provisions and subject to the requirements of the State of Delaware (particularly Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified, and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

FIRST: The name of the limited liability company (hereinafter called the "limited liability company") is Quality Built, LLC.

SECOND: The address of the registered office and the name and the address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are the Corporation Service Company, 2711 Centerville Road Suite 400, Wilmington, Delaware 19808.

Dated: July 24, 2009

By: /s/ Vito Piacente
Vito Piacente
Authorized Person